SURFACE MINING AND RECLAMATION ACT (SMARA) REGULATIONS

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California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1

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SURFACE MINING AND RECLAMATION ACT (SMARA) REGULATIONS

Article 1. Surface Mining and Reclamation Practice

§ 3500. Purpose. It is the purpose of this subchapter to establish state policy for the reclamation of mined lands and the conduct of surface mining operations in accord with the general provisions set forth in Public Resources Code, Division 2, Chapter 9, Section 2710 et seq. (Surface Mining and Reclamation Act of 1975, as amended by Statutes of 1980).

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2710-2795, Public Resources Code.

HISTORY

1. *New Chapter 8, Subchapter 1 (Sections 3500-3508, not consecutive, and Appendices A, B and C) filed 3-29-77; effective thirtieth day thereafter (Register 77, No. 14).*
2. *Amendment of NOTE filed 8-10-82; effective thirtieth day thereafter (Register 82, No. 33).*
3. *Repealer and new section filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18).*

§ 3501. Definitions. The following definitions as used herein shall govern the interpretation of these regulations:

Agricultural Activity. The cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity, the raising of livestock or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with those farming operations, including preparation of these products for market.

Angle of Repose. The maximum angle of slope (measured from horizontal plane) at which loose cohesionless material will come to rest on a pile of similar material.

Backfill. Earth, overburden, mine waste or imported material used to replace material removed during mining.

Borrow Pits. Excavations created by the surface mining of rock, unconsolidated geologic deposits or soil to provide material (borrow) for fill elsewhere.

Critical Gradient. The maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

Excavations for On-Site Construction. Earth material moving activities that are required to prepare a site for construction of structures, landscaping, or other land improvements (such as excavation, grading, compaction, and the creation of fills and embankments), or that in and of themselves constitute engineered works (such as dams, road cuts, fills, and catchment basins).

Grading. To bring an existing surface to a designed form by cutting, filling, and/or smoothing operations.

Minerals. Any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

Person. Any individual, firm, association, corporation, organization, or partnership, or any city, county, district, or the state or any department or agency thereof.

Reclamation Plan. The applicant's (operator's) completed and approved plan for reclaiming the lands affected by his surface mining operations conducted after January 1, 1976, as called for in Section 2772 of the Act.

Resoiling. The process of artificially building or reconstructing a soil profile.

Stream Bed Skimming. Excavation of sand and gravel from stream bed deposits above the mean summer water level or stream bottom, whichever is higher.

Surface Mining Operations. In addition to the provisions of Section 2735 of the Act, borrow pitting, streambed skimming, segregation and stockpiling of

mined materials (and recovery of same) are deemed to be surface mining operations unless specifically excluded under Section 2714 of the Act or Section 3505 of these regulations.

Topsoil. The upper part of the soil profile that is relatively rich in humus, which is technically known as 2 the A-horizon of the soil profile.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2726-2735, Public Resources Code.

HISTORY

1. *Repealer of former Section 3501, and renumbering and amendment of former Section 3502 to Section 3501 filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Registers 82, No. 33 and 79, No. 35.*
2. *Change without regulatory effect deleting definition of "Intermittent Operation" filed 1-10-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 2).*
3. *Amendment adding definition of "Agricultural Activity" file 9-18-79; operative 10-18-97 (Register 97, No. 38).*
4. *Change without regulatory effect repealing definition of "Temporarily Deactivated Operation" filed 3-29-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 13).*

§ 3502. The Reclamation Plan. (a) Objectives. Reclamation plans shall be developed to attain the objectives of Public Resources Code Section 2712(a)-(c).

(b) Reclamation Plan Elements. In addition to the information required by Public Resources Code Section 2772, the following elements shall be included in the reclamation plan:

(1) The environmental setting of the site of operations and the effect that possible alternate reclaimed site conditions may have upon the existing and future uses of surrounding lands.

(2) The public health and safety, giving consideration to the degree and type of present and probable future exposure of the public to the site.

(3) The designed steepness and proposed treatment of the mined lands' final slopes shall take into consideration the physical properties of the slope material, its probable maximum water content, landscaping requirements, and other factors. In all cases, reclamation plans shall specify slope angles flatter than the critical gradient for the type of material involved. Whenever final slopes approach the critical gradient for the type of material involved, regulatory agencies shall require an engineering analysis of the slope stability. Special emphasis on slope stability and design shall be necessary when public safety or adjacent property may be affected.

(4) Areas mined to produce additional materials for backfilling and grading, as well as settlement of filled areas, shall be considered in the reclamation plan. Where ultimate site uses include roads, building sites, or other improvements sensitive to settlement, the reclamation plans shall include compaction of the fill materials in conformance with good engineering practice.

(5) Disposition of old equipment.

(6) Temporary stream or watershed diversions.

(c) Adequacy. In judging the adequacy of a particular reclamation plan in meeting the requirements described herein and within the Act, the lead agency shall consider the physical and land-use characteristics of the mined lands and their surrounding area pursuant to Public Resources Code Section 2773.

(d) Each surface mining operation as defined in Public Resources Code Section 2735 and Title 14 California Code of Regulations Section 3501, shall have no more than one approved reclamation plan applicable to that operation except as described in subsection (i) to this section. An amended reclamation plan shall be approved by the lead agency prior to the commencement of activities determined to be a substantial deviation from the approved plan. For purposes of the Surface Mining and Reclamation Act of 1975 and regulations adopted pursuant thereto, a substantial deviation shall be defined as a change or expansion to a surface mining operation that substantially affects the completion of the previously approved reclamation plan, or that changes the end use of the approved plan to the extent that the scope of the reclamation required for the surface mining operation is substantially changed. In determining whether a change or expansion constitutes a substantial deviation, the lead agency shall take into consideration the following factors:

(1) A substantial increase in the disturbance of a surface area or in the maximum depth of mining;

(2) A substantial extension of the termination date of the mining operation as set out in the approved reclamation plan;

(3) Changes that would substantially affect the approved end use of the site as established in the reclamation plan;

(4) The consistency of any proposed change to the operation with the previously adopted environmental determinations.

(5) Any other changes that the lead agency deems substantial deviations as defined in the subsection.

(e) An amended reclamation plan shall be filed if the lead agency determines, after an inspection, that the surface mining operation can no longer be reclaimed in accordance with its approved reclamation plan. Such amended plan shall incorporate current reclamation standards as described in Chapter 9 (commencing with Section 2710) and Title 14 of the California code of Regulations commencing with Section 3700.

(f) In the event that a proposed change is determined not to be a substantial deviation from an approved reclamation plan, then current reclamation standards need only apply to the amended portion of the plan. An amendment to the originally approved reclamation plan that includes an expanded operating area shall be approved by the lead agency prior to implementation of the activities in the expansion area.

(g) Should an expansion of an operation into an area not covered by an approved reclamation plan be determined by the lead agency to be a substantial deviation, an amended reclamation plan shall be prepared that ensures adequate reclamation for the surface mining operation. The amended reclamation plan shall incorporate current reclamation standards for the entire area governed by the plan that is impacted by the deviation. If reclamation has been substantially initiated at the time that a lead agency determines that an amended reclamation plan is required, the operator may complete reclamation of those areas according to the previously approved reclamation plan, except for those areas that are or will be affected by the proposed expanded mining activities which shall be subject to the requirements of the amended reclamation plan.

(h) Where a surface mining operation has in effect an approved reclamation plan and approved financial assurance covering a surface mining operation, and the mining operator proposes to utilize a new surface area, not included within the approved reclamation plan, for purposes of creating a new and separate pit, quarry, or other excavation, the operator may, at the option of the operator do one of two things:

(1) Amend the existing reclamation plan to encompass the new area designated for use as a pit, quarry, or excavation, together with any other changes necessary to make the reclamation plan, as amended, conform to the Act and these regulations.

If such an amended plan is proposed, the amended plan must conform to the current reclamation standards required by the Act and the regulations, as to the new area(s) designated as a quarry, pit or excavation and any processing facilities, roads, sumps, drainage systems or storage or processing areas, which that new area will utilize within the previously approved reclamation plan area or within the new area. Concurrently with the approval of the amended reclamation plan to encompass the new area operations, unless such a provision already is in the existing reclamation plan, the lead agency may require an amendment to the existing reclamation plan to provide for the immediate commencement of the reclamation of any mined lands which no longer are required for mining operations.

(2) Obtain approval of a new reclamation plan covering the new area and any facilities, roads, sumps, drainage systems, or storage or processing areas, utilized in connection with operations in the new area. Any areas encompassed within such plan shall conform to the reclamation standards of the Act and these regulations that are in effect at the time the reclamation plan is approved.

(i) The following exemptions to this section shall apply:

(1) Where a single surface mining operation has separate facilities located within different lead agency jurisdictions, and where these facilities are separated by a distinct and significant physical boundary such as a major highway, stream channel, or the like, the operator may obtain separate reclamation plans and financial assurances for the facilities from the lead agencies in which those facilities are located.

(2) Those surface mining operations that have more than one reclamation plan approved on or before October 1, 2002 shall not be subject to the requirements for a single reclamation plan as described in subsection (d) of this section unless new mining operations or

substantial deviations to the operation are proposed after that date that require one of the plans to be amended.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2712(a)-(c), 2756-2757, 2770 and 2772-2773, Public Resources Code.

HISTORY

1. *Renumbering and amendment of former Section 3502 to Section 3501, and new Section 3502 filed 4-29-85;effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Registers 82, No. 33 and 79, No. 35.*
2. *New subsections (d)-(i)(2) filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3503. Surface Mining and Reclamation Practice. The following are minimum acceptable practices to be followed in surface mining operations:

(a) Soil Erosion Control.

(1) The removal of vegetation and overburden, if any, in advance of surface mining shall be kept to the minimum.

(2) Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion.

(3) Erosion control facilities such as retarding basins, ditches, streambank stabilization, and diking shall be constructed and maintained where necessary to control erosion.

(b) Water Quality and Watershed Control.

(1) Settling ponds or basins shall be constructed to prevent potential sedimentation of streams at operations where they will provide a significant benefit to water quality.

(2) Operations shall be conducted to substantially prevent siltation of ground-water recharge areas.

(c) Protection of Fish and Wildlife Habitat. All reasonable measures shall be taken to protect the habitat of fish and wildlife.

(d) Disposal of Mine Waste Rock and Overburden. Permanent piles or dumps of mine waste rock and overburden shall be stable and shall not restrict the natural drainage without suitable provisions for diversion.

(e) Erosion and Drainage. Grading and revegetation shall be designed to minimize erosion and to convey surface runoff to natural drainage courses or interior basins designed for water storage. Basins that will store water during periods of surface runoff shall be designed to prevent erosion of spillways when these basins have outlet to lower ground.

(f) Resoiling. When the reclamation plan calls for resoiling, coarse hard mine waste shall be leveled and covered with a layer of finer material or weathered waste. A soil layer shall then be placed on this prepared surface. Surface mines that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining materials. The use of soil conditioners, mulches, or imported topsoil shall be considered where revegetation is part of the reclamation plan and where such measures appear necessary. It is not justified, however, to denude adjacent areas of their soil, for any such denuded areas must in turn be reclaimed.

(g) Revegetation. When the reclamation plan calls for revegetation the available research addressing revegetation methods and the selection of species having good survival characteristics, for the topography, resoiling characteristics, and climate of the mined areas shall be used.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2756 and 2757, Public Resources Code.

HISTORY

1. *Repealer of former Section 3503, and renumbering and amendment of former Section 3504 to Section 3503 filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Register 82, No. 33.*

§ 3503.1. Reclamation Plan Elements.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2756, 2757, 2772 and 2773, Public Resources Code.

HISTORY

1. *Repealer filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18).*

§ 3504. Administration by Lead Agency.

(a) Record Keeping. The lead agency shall establish and maintain in-house measures and procedures to ensure organized record-keeping and monitoring of surface mining reclamation under its jurisdiction. The lead agency shall forward a copy of each permit and approved reclamation plan and financial assurance instrument to the director of the Department of Conservation.

(b) Financial Assurances. The lead agency shall ensure that the objectives of the reclamation plan will be attained. This may include provisions for surety bonds, irrevocable letters of credit, trust funds, or other forms of financial assurances adopted by the board in accordance with PRC § 2773.1 (e), to guarantee the reclamation in accordance with the approved reclamation plan.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2757, 2758(b), 2774(a) and 2778, Public Resources Code.

HISTORY

1. *Renumbering and amendment of former Section 3504 to Section 3503, and renumbering and amendment of former Section 3505 to Section 3504 filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Register 82, No. 33.*
2. *Change without regulatory effect amending section filed 4-3-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 14).*

§ 3504.5. Mine Inspections Per Calendar Year. The purpose of this section is to clarify and make specific the scope, nature, and frequency of a surface mine inspection required under Public Resources Code Section 2774(b).

(a) Inspection of a surface mining operation shall be conducted not less than once each calendar year to determine if the operation is in compliance with the requirements of Public Resources Code Chapter 9, commencing with section 2710. The lead agency, or the board if the board is the lead agency, shall send written notice to the operator at least ten days prior to any inspection.

(b) A person, who in the determination of the lead agency has demonstrated competence in performing inspections of surface mining operations, shall perform inspections. Evaluation of geological and engineering conditions, when required, shall be performed by or under the supervision of a Geologist Registered to practice in the state under the Geologists and Geophysicists Act or a Professional Engineer registered to practice in the state under the Professional Engineers Act.

(c) A surface mine inspection shall not be performed by any person who holds a financial interest in or has been employed by the surface mining operation in any capacity, including as a consultant or as a contractor, during the year preceding the inspection.

(d) Annual surface mine inspections may be conducted by a specialist or a team of specialists with expertise that includes but is not limited to, geology, engineering, surveying, ecology, water chemistry and quality, and permitting. Persons participating in the inspection shall follow such reasonable requirements of the operator so that there is minimal interference with the surface mining operation and the inspection is conducted in a safe manner in accordance with all state and federal safety requirements.

(e) The operator shall be responsible for the reasonable cost of the annual inspection conducted by the lead agency or by the board if the board is the lead agency.

(f) Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; samples of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.

(g) The inspection report to the lead agency shall consist of the inspection form MRRC-1 (4/97), developed by the department and approved by the board, and any other reports or documents prepared by the inspector or inspection team. The lead agency shall provide a copy of the completed inspection report along with the lead agency's statement regarding the status of compliance of the operation to the director within 30 days of completion of the inspection. A copy of the completed inspection report and lead agency statement of compliance shall also be provided to the mine operator within 30 days of completion of the inspection.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2774, Public Resources Code.

HISTORY

1. *New section filed 4-7-2003; operative 5-7-2003 (Register 2003, No. 15).*

§ 3505. Special Provisions.

(a) Exemptions.

(1) In addition to the provisions of Public Resources Code Section 2714(a), (c) and (d), any surface mining

operation that does not involve either the removal of a total of more than 1,000 cubic yards of minerals, ores, and overburden, or involve more than one acre in any one location, shall be exempt from the provisions of the Act.

(2) The purpose of this subdivision is to define the criteria of a "flood control facility," the clean out of which is exempt from the requirements of the Surface Mining and Reclamation Act of 1975 under PRC 2714(a) and (b). It is intended that cleaning out of a previously engineered, constructed facility for which approved design plans exist is an activity to restore the usefulness of that flood control facility to its original design purpose. It is not the intent of this subsection to exempt the removal of materials from natural channels.

The removal of post construction accumulated materials from a responsible public agency approved, managed, engineered, constructed facility intended for the purpose of water retention or detention, debris retention, or from a flood water conveyance, where the post extraction condition, capacity or grade of the facility or conveyance does not exceed the as-built approved design specification contained in the approved documents for the facility or conveyance, shall be exempt from the provisions of the Act.

(3) The excavation, grading, or transportation of mineral materials, including overburden, exclusive of commercial surface mining activities as defined in Public Resources Code Section 2714(d), that is wholly integral and necessary to the conduct of agricultural activities either onsite or on non-contiguous parcels, shall meet the requirements of Public Resources Code Section 2714(a) for farming excavations or grading. This exemption does not apply to the exportation of mineral materials, including overburden, from the property that is in excess of 1,000 cubic yards for commercial purposes.

(b) Vested Rights. The permit and reclamation plan requirements for persons with vested rights are stated in Public Resources Code Section 2776.

Where a person with vested rights continues surface mining in the same area subsequent to January 1, 1976, he shall obtain an approval of a reclamation plan covering the mined lands disturbed by such subsequent surface mining. In those cases where an overlap exists (in the horizontal and/or vertical sense) between pre- and post-Act mining, the reclamation plan shall call for reclamation proportional to that disturbance caused by the mining after the effective date of the Act.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2714, 2758(c) and 2776, Public Resources Code; and 78 Ops.Cal.Atty.Gen. 343 (1995).

HISTORY

1. *Renumbering and amendment of former Section 3505 to Section 3504, and renumbering and amendment of former Section 3506 to Section*
2. *3505 filed 4-29-85; effective thirtieth day thereafter (Register 85, No. 18). For prior history, see Register 82, No. 33.*
3. *Amendment adding new subsection (a)(1) designator, new subsection (a)(2), and amendment of Note filed 4-11-97; operative 5-11-97 (Register 97, No. 15).*
4. *Amendment of subsection (a)(2), new subsection (a)(3), and amendment of Note filed 9-18-97; operative 10-18-97 (Register 97, No. 38).*

Article 2. Areas Designated to be of Regional Significance

§ 3550. Introduction. Pursuant to Section 2790 of the Surface Mining and Reclamation Act, the Mining and Geology Board designates certain mineral resource sectors within the following geographical areas to be of regional significance.

NOTE

Authority and reference cited: Section 2790, Public Resources Code.

HISTORY

1. *New Article 2 (Sections 3550 and 3550.1) filed 10-22-81; effective thirtieth day thereafter (Register 81, No. 43).*

§ 3550.1. Tujunga and Pacioma Wash Areas of the San Fernando Valley Region, Los Angeles County.

On January 7, 1981, following a December 11, 1980, public hearing, the Mining and Geology Board designated Sectors A, B, C, and D of the Tujunga and Pacoima Wash areas to be regional significance. In general, these sectors are described as follows:

(1) Sector A – Tujunga Valley east of the Hansen Dam flood control basin, west of Interstate 210 and excluding identified archaeological sites;

(2) Sector B – the Hansen Dam rea;

(3) Sector C – an area southwest of Hansen Dam; and

(4) Sector D – Pacoima Wash north of Lopez Dam. These sectors contain sand and gravel deposits which provide a source of construction aggregate for the region's future need. Designation Map #81-1 and a report summarizing the designation findings of the State Mining and Geology Board are on file at the Board's office in Sacramento.

NOTE

Authority and reference cited: Section 2790, Public Resources Code.

§ 3550.2. Santa Clara River Valley Area of the Western Ventura County Region, Ventura County.

On January 28, 1982, following a November 19, 1981, public hearing, the State Mining and Geology Board designated Sectors A, B, C, D, E, F, G, H, I, and J, on Designation Map #82-1, in the Santa Clara River Valley to be of regional significance. In general, these sectors are described as follows:

(1) Sector A – Instream deposits of the Santa Clara River near the community of El Rio beginning approximately one mile downstream of the U.S. Highway 101 bridge and extending to a point approximately two miles upstream of the Los Angeles Avenue bridge.

(2) Sector B – Offstream deposits located adjacent to Vineyard Avenue in the community of El Rio.

(3) Sector C – Offstream deposits located in and adjacent to the community of El Rio.

(4) Sector D – Offstream deposits located east of Los Angeles Avenue and south of the Santa Clara River.

(5) Sector E – Instream deposits of the Santa Clara River beginning at the eastern boundary of Sector A and extending upstream to the confluence of Santa Paula Creek.

(6) Sector F – Instream deposits extending from the eastern boundary of Sector E upstream to the confluence of Sespe Creek

(7) Sector G – Instream deposits extending from the eastern boundary of Sector F upstream to Cavin Road.

(8) Sector H – Instream deposits extending from the eastern boundary of Sector G upstream to Piru.

(9) Sector I – Instream deposits extending from the eastern boundary of Sector H upstream for approximately three miles.

(10) Sector J – Instream deposits extending from the eastern boundary of Sector I upstream to Ventura County line.

These sectors contain sand and gravel deposits that provide a source of construction aggregate for the region's future need. Designation Map #82-1 and a report summarizing the designation findings of the State Mining and Geology Board, "Designation of Regionally Significant Construction Aggregate Resource Areas in the Western Ventura County and Simi Production-Consumption Regions – March 1982" are on file at the Board's office in Sacramento.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761 – 2763 and 2790 – 2781, Public Resources Code.

HISTORY

1. *New Section filed 5-6-82; effective thirtieth day thereafter (Register 82, No. 19).*

§ 3550.3. Simi Valley Area of the Simi Region, Ventura County.

On January 28, 1982, following a November 19, 1981, public hearing, the State Mining and Geology Board designated Sectors A, B, and C, on Designation Map 82-1, in the Simi Valley area to be of regional significance. In general, these sectors are described as follows:

(1) Sector A – Hillside deposits located on Oak Ridge and the Simi Hills.

(2) Sector B – Hillside deposits located along a portion of Oak Ridge extending from Long Canyon eastward to the Ventura County line.

(3) Sector C – Hillside deposits located above Meir and Runkle canyons in the Simi Hills.

These sectors contain sand and gravel deposits that provide a source of construction aggregate for the region's future needs. Designation Map #82-1 and a report summarizing the designation findings of the State Mining and Geology Board, "Designation of Regionally Significant Construction Aggregate Resource Areas in the Western Ventura County and Simi Production-Consumption regions – March 1982," are on file at the Board's office in Sacramento.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2791, Public Resources Code.

HISTORY

1. *New section filed 5-6-82; effective thirtieth day thereafter (Register 82, No. 19).*

§ 3550.4. Santa Ana River, Santiago Creek Arroyo Trabuco, San Juan Creek, and Temescal Valley Areas of the Orange County-Temescal Valley Region, Orange, Riverside, and San Bernardino Counties.

A set of maps identifying the exact locations of the designated areas, entitled "Regionally Significant Construction Aggregate Resource Areas in the Orange County – Temescal Valley and San Gabriel Valley Production-Consumption Regions," is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas have been designated as being of regional significance:

Sector A – Instream deposits of the Santa Ana River beginning at Prado Dam and extending downstream for one-half miles.

Sector B – Instream deposits along the north side of the Santa Ana River beginning near Coal Canyon and extending downstream for approximately three miles.

Sector C – Instream deposits along the south side of the Santa Ana River from Horseshoe Bend downstream to the Weir Canyon Bridge.

Sector D – Offstream deposits located between Orangethrope Avenue and La Palma Avenue in the northeastern part of Anaheim.

Sector E – Offstream deposits located near the intersection of Fee Ana Street and La Palma Avenue in Anaheim.

Sector F – Offstream deposits in the Warner Basin located near Jefferson Street and the Riverside Freeway in Anaheim.

Sector G – Offstream deposit located on the south side of the Santa Ana River near Lincoln Avenue in Anaheim.

Sector H – Hillside deposit located immediately east of Prado Dam in the Chino Hills.

Sector I – Hillside deposit located east of Gypsum Canyon in the Santa Ana Mountains.

Sector J – Instream deposit of Santiago Creek Beginning near Villa Park Dam and extending downstream to approximately the Newport Freeway.

Sector K – A conglomerate deposit in upper Blind Canyon east of Villa Park Dam.

Sector L – Instream deposit located on Santiago Creek between Santiago Dam and Irvine Park

Sector M – Instream deposit located under the Santiago Reservoir on Santiago Creek.

Sector N – Instream deposits of Santiago Creek beginning near Santiago Reservoir and extending upstream to the confluence of Williams Canyon, including a portion of Silverado Canyon.

Sector O – Offstream deposit located on the southeast side of Cota Street in Corona.

Sector P – Offstream deposits of Temescal Wash near the intersection of the Riverside Freeway and Interstate 15 near Corona.

Sector Q – Instream deposits located in Temescal Wash beginning near Magnolia Avenue and extending upstream to Cajalco Road.

Sector R – Instream deposits located in Temescal Wash beginning near the Olsen Canyon confluence and extending upstream to Lee Lake.

Sector S – Offstream deposits of the Coldwater Mayhew Fan near Glen Ivy Hot Springs.

Sector T – Instream deposits of San Juan Creek beginning near Casper Regional Park and extending downstream to approximately Ganado Road in San Juan Capistrano.

Sector U – Instream deposits of Arroyo Trabuco beginning one-half mile above Interstate 5 and extending approximately five miles upstream.

Sector V – Instream deposits of Arroyo Trabuco beginning at the Live Oak Canyon Road crossing and extending upstream for approximately two miles.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2791, Public Resources Code.

HISTORY

1. *New section filed 8-24-83; effective thirtieth day thereafter (Register 83, No. 35).*

§ 3550.5. San Gabriel River, Eaton Wash, Devils Gate, and Palos Verdes Areas of the San Gabriel Valley Region, Los Angeles County.

A set of maps identifying the exact locations of the designated areas, entitled “Updated Designation of Regionally Significant Construction Resources in the Northern San Gabriel Production-Consumption Regions, Los Angeles County, California, 2013” and “Updated Designation of Regionally Significant Construction Aggregate Resources in the Eaton Wash, Devils Gate Reservoir, and Palos Verdes Areas, San Gabriel Production-Consumption Region, Los Angeles County, California, 2013” is incorporated by reference into this regulation. The areas for designation or termination of designation are shown on the two Plates. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas have been designated as being of regional significance:

Sector A -Offstream and instream deposits of the San Gabriel River below Morris Dam near Azusa.

Sector B -Instream deposit consisting of the flood control channel of the San Gabriel River upstream of Foothill Boulevard near Azusa.

Sector C -Instream deposits in a portion of the Santa Fe Flood Control Basin and spillway channel near Irwindale.

Sector D -Offstream and instream deposits in the western portion of the San Gabriel River Fan near Baldwin Park and Arcadia.

Sector E -Offstream deposits in the eastern portion of the San Gabriel River Fan in Irwindale.

Sector F -Instream deposits of Eaton Wash located in the Eaton Wash Flood Control Basin.

Sector H -Instream deposits of Arroyo Seco in the Devils Gate Reservoir area.

Sector I -Hillside deposit in the Palos Verdes Hills on Narbonne Avenue in Bent Springs Canyon.

Sector J - Hard rock deposits in the San Gabriel Mountains northeast of San Gabriel Creek in the City of Azusa.

Sector K - Offstream deposits in the eastern portion of the San Gabriel River Fan in Irwindale.

Sector L - Offstream deposits in the eastern portion of the San Gabriel River Fan in Irwindale.

Sector M - Offstream and instream deposits in the western portion of the San Gabriel River Fan near Baldwin Park and Arcadia.

Six Sectors are identified for termination of designation status because of high-value incompatible land use developments.

Sector A (263 acres): There are six separate areas that are now incompatible with mining. Forty-three million tons of resources in these areas have been lost because of urbanization and 24 million tons of resources have been lost because of landfill operations.

Sector B (12 acres): There is one area that has become incompatible with mining. Eight million tons of resources have been lost to urbanization.

Sector C (42 acres): There are two areas that have become incompatible with mining. Thirty-six million tons of resources have been lost to urbanization.

Sector D (391 acres): There are eleven areas that are now incompatible with mining. Fifty-two million tons of resources have been lost to urbanization and 64 million tons of resources have been lost because of landfill operations.

Sector E (422 acres): There are six areas that have become incompatible with mining. Fourteen million tons of resources have been lost to urbanization, and 179 million tons of resources have been lost to landfill operations.

Sector I (104 acres): There are two areas that have become incompatible with mining. Fifteen million tons of resources have been lost to landfill operations.

Note: Authority cited: Sections 2790 and 2793, Public Resources Code. Reference: Sections 2726, 2761-2763, 2790-2791 and 2793, Public Resources Code.

HISTORY

1. *New section filed 8-24-83; effective thirtieth day thereafter (Register 83, No. 35).*
2. *Amendment filed 10-2-2013; operative 1-1-2014 (Register 2013, No. 40).*

§ 3550.6. Construction Aggregate Resources, Western San Diego County Region.

A set of maps identifying the exact locations of the designated resource areas, entitled “Regionally Significant Construction Aggregate Resource Areas in the Western San Diego County Production-Consumption Region” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – A granitic rock deposit located in eastern Oceanside, southwest of the intersection of Highway 78 and College Boulevard, near Buena Vista Creek Canyon.

Sector B – Channel and flood-plain deposits of the San Luis Rey River beginning near North River Road in Oceanside and extending upstream for approximately six miles.

Sector C – Channel and flood-plain deposits of the San Luis Rey River from near the Highway 78 bridge upstream to approximately the Interstate 15 bridge.

Sector D – Alluvial deposits of the upper San Luis Rey River, extending discontinuously from the Interstate 15 bridge upstream to the community of Rincon in Pauma Valley.

Sector E – A hillside alluvial fan deposit located northeast of the San Luis Rey River, extending from the community of Pala to Pauma Valley.

Sector F – An alluvial fan deposit located in upper Pauma Valley near the community of Rincon.

Sector H – A granitic rock deposit located in Twin Oaks Valley approximately three miles east of the City of Vista.

Sector I – An alluvial fan deposit extending eastward from Lake Hodges on the San Dieguito River to the upper end of the San Pasqual Valley.

Sector J – A mesa-top conglomerate deposit consisting of four areas located in or near the communities of Rancho Bernardo, Rancho Penasquitos, Poway Mira Mesa, Tierra Santa, and Santee, and on the Miramar Naval Air Station.

Sector K – A metavolcanic rock deposit located in Mission Gorge on the San Diego River.

Sector M – Channel and flood-plain deposits of the upper San Diego River from Magnolia Avenue in the City of Santee to within one mile of El Capitan Dam.

Sector N – A channel deposit of the lower Sweetwater River located near the community of Sunnyside.

Sector O – A channel deposit of the Sweetwater River located at the upper end of Sweetwater Reservoir.

Sector P – A channel deposit of the Sweetwater River that extends from near the Singing Hills Golf Course upstream for a distance of approximately four miles.

Sector Q – A channel deposit of the Sweetwater River that extends from near the Singing Hills Golf Course upstream for a distance of approximately four miles.

Sector R – Channel and adjacent mesa deposits of the Otay River extending from near Interstate 805 upstream to approximately the head of Otay Valley.

Sector S – A metavolcanic rock deposit on Rock Mountain located on the north side of upper Otay Valley.

Sector U – Floodplain deposits of the Tijuana River extending from the international boundary downstream for a distance of approximately four miles.

Sector V – Conglomerate deposits located on the Border Highlands immediately south of the Tijuana River.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.

HISTORY

1. *New section filed 3-19-85; effective thirtieth day thereafter (Register 85, No. 12).*

§ 3550.7. Construction Aggregate Resources, Claremont – Upland Region.

A set of maps identifying the exact locations of the designated resources areas, entitled “Regionally Significant Construction Aggregate Resources Areas in Claremont-Upland Production-Consumption Region,” is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board’s office in Sacramento.*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – The annual recharge area upstream from the San Antonio Creek Flood Control Dam.

Sector B – Eight parcels south of San Antonio Creek Flood Control Dam in the unurbanized areas of the San Antonio Creek Fan, northeast of the City of Claremont. Sector B is roughly bounded by Foothill Boulevard on the south, San Antonio Avenue on the east, and Thompson Creek on the west.

Sector C – Four parcels in the proximal part of the Cucamonga Creek Fan, north of the City of Upland. The area is generally north of 19th Street, west of Carmelian Avenue, east of Euclid Avenue, and south of the San Bernardino National Forest.

Sector D – Three parcels covering parts of the Day Creek and Deer Creek fans between the cities of

Cucamonga and Fontana. It is bounded by the San Gabriel Mountains on the north and Highland Avenue on the south.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public Resources Code.

HISTORY

1. *New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49). *Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.8. Constructive Aggregate Resources, San Bernardino Region.

The areas for designation and termination of designation are shown on two plates entitled "*Updated Designation in the Northern San Bernardino Production-Consumption (P-C) Region, San Bernardino and Riverside Counties, California (2013) Plate I, Updated Designation in the Southern San Bernardino Production-Consumption (P-C) Region, San Bernardino and Riverside Counties, (2013) Plate 2,* and are incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A: This Sector includes nineteen subsectors on the Lytle Creek Fan in and around the City of Fontana. Includes subsectors A-4-a, A-4-b, A-4-c, A-7-a, A-7-b, A-7-c, A-8-a, A-8-b, A-9-a, A-9-b, A-13-a, A-14, A-16-a, A-16-b, A-17-a, A-19-a, and A-19-b, The larger subsectors are north of Fontana; several smaller subsectors are scattered to the east and south of Fontana to the Santa Ana River.

Sector B: This Sector includes twelve subsectors covering the unurbanized portions of Lytle Creek Wash from north of Freeway 15, west to the downtown area of the City of San Bernardino. Includes subsectors B-1-a, B-1-b, B-5-a, B-5-b, B-5-c, B-6-a, B-7-a, B-8, B-9. B-10, B-14, and B-15.

Sector C: This Sector includes fourteen subsectors along the Cajon Creek Wash from the bend in the wash south of Lost Lake, southward to the confluence of Cajon Creek and Lytle Creek. Includes subsectors C-1-a, C-1-b, C-3-a, C-4-a, C-5-a, C-5-b, C-5-c, C-6-a, C-6-b, C-6-c, C-6-d, C-6-e, C-8, and C-10-a.

Sector E: This Sector includes fifteen subsectors in and along the Santa Ana River from Freeway 395, south and west to the town of Rubidoux. Includes subsectors E-1, E-2-a, E-5-a, E-9, E-10-a, E-10-b, E-13-a, E-13-b, E-14-a, E-17-a, E-19, E-20, E-22, E-23, and E-24-a

Sector F: This Sector includes eighteen subsectors along the upper Santa Ana River and Santa Ana Wash and areas along smaller drainages merging with the Santa Ana Wash, including Warm Creek, City Creek, and Mill Creek. Includes subsectors F-2-a, F-3-a, F-6-a, F-6-b, F-9, F-14-a, F-14-b, F-15-a, F-15-b, F-15-c, F-16-a, F-17-a, F-18, F-20-a, F-23-a, F-23-b, F-32-a, and F-33.

Subsector G-1: This Sector includes subsectors G-1-a, G-1-b and G-1-c. These subsectors cover parts of the San Gorgonio River alluvial fan, east of the City of Banning, and extends from the mouth of Banning Canyon.

Subsector G-2: This Sector includes subsectors G-2-a, G-2-b, and G-2-c. These subsectors cover parts of the San Gorgonio River alluvial fan, west and south of the community of Cabazon.

Subsector J-1: This subsector is bounded to the southeast by the 15 Freeway and on the northwest by Lytle Creek Road. It is adjacent to Sector B-2 on the northeast.

Subsector J-2: This subsector is northeast of the 15 Freeway.

Subsector J-3: This subsector is bounded on the northwest by the 15 Freeway, on the east by Citrus Avenue, and on the south by Duncan Canyon Road.

Subsector J-4: This subsector is bounded on the southeast by a transmission line, on the northwest by the 15 Freeway, and on the west by Citrus Avenue.

Subsector J-5: This subsector is bounded on the south by a utility corridor, on the west by a transmission line, and on the northwest by the 15 Freeway.

Subsector J-6: This subsector is bounded on the north by a transmission line and utility corridor, on the west by Citrus Avenue, on the east by Sierra Avenue, and on the south by Highland Avenue.

Subsector J-7: This subsector is bounded on the south by a utility corridor, on the north by Duncan Canyon Road, on the east by Sierra Avenue, and on the west by Lytle Creek Road.

Subsector J-8: This subsector is bounded on the north by a utility corridor, on the south by a transmission line, on

the west by Lytle Creek Road, and on the east by Sierra Avenue.
Subsector J-9: This subsector is bounded on the north by Summit Avenue, on the east by Citrus Avenue, and on the south by La Sierra Drive.
Subsector J-10: This subsector is bounded by Sierra Avenue on the west, by Windflower Avenue on the south, and by Mango Avenue on the east.
Subsector J-11: This subsector is bounded on the east by Alder Avenue, on the north by Summit Avenue.
Subsector J-12: This subsector is bounded on the east by Alder Avenue. The Mid-Valley Landfill Pit operated by Robertson's Ready Mix Concrete Company is in this Sector.
Subsector J-13: This subsector is bounded on west by Ayala Drive and on the south by Jerry Eaves Park.
Sector K: This Sector is north of Lake Elsinore, on the northeast corner of the Corona Freeway and Nichols Road. The area is the site of an active crushed-stone quarry operated by the Pacific Aggregates, Inc.
AREAS FOR TERMINATION OF DESIGNATION:
The following Sectors are identified by the State Geologist for termination of designation status due to high-value incompatible land use developments. These areas are shown on the accompanying Plates.
Subsector A-4: This Sector includes subsectors A-4-d, A-4-e, A-4-f, A-4-g and A-4-h which are now covered by housing developments, freeway and freeway interchange.
Subsector A-6: This Sector is north of Highland Avenue and is now covered by the State Route 210 Freeway.
Subsector A-7: Includes subsector A-7-d, which is now covered by housing developments, urbanization and freeway.
Subsector A-8-c: Most of this subsector is covered by housing development.
Subsector A-9: Includes subsector A-9-c, which is now covered by housing development.
Subsector A-13: Includes subsector A-13-b, which is covered by housing development.
Subsector A-15: This subsector is in an area south of Foothill Boulevard, east of Beech Avenue, north of Arrow Route, and west of Lime Avenue, and is covered by industrial development.
Subsector A-16-c: This subsector is now mainly covered by industrial development.
Subsector A-17: Includes subsectors A-17-b and A-17-c, which are now covered by Industrial development.
Subsector A-18: This subsector is south of Arrow Boulevard and north of the Burlington Northern-Southern Pacific Railway Line, between Beech and Lime Avenues. Industrial development now covers this Sector.
Subsector A-19-c: This subsector, on the northwestern corner of Citrus Avenue and the Burlington Northern-Southern Pacific Railway Line, is now covered by industrial development.
Subsector A-23: This subsector is south of Freeway 10, north of Slover Avenue and east of Sierra Avenue. Urban and industrial development now covers this Sector.
Subsector A-24: This subsector is south of Slover Avenue and north of Santa Ana Avenue, between Spruce and Cactus avenues. Housing development now covers the Sector.
Subsector A-27: This subsector is south of Santa Ana Avenue and north of Jurupa Avenue, between Lilac and Cactus avenues. Housing and industrial development now covers this Sector.
Subsector A-28: This subsector is between Hall Avenue and South Riverside Avenue, and northwest of Agua Mansa Road, is now covered by housing development.
Subsector A-29-b: This subsector is between Hall Avenue and South Riverside Avenue, and northwest of Agua Mansa Road, is now covered by housing development.
Subsector A-30: This subsector is between Hall Avenue and South Riverside Avenue, and northwest of Agua Mansa Road, is now covered by housing development.
Subsector B-2: The northern and northeastern part of the subsector, south of Freeway 210 and west of Brampton Avenue is now covered by housing development.
Subsector B-5: Includes subsectors B-5-d, B-5-e, B-5-f, B-f-g, B-5-h and B-5-i: The northern and northeastern part of the Sector, south of Freeway 210 and west of Brampton Avenue is now covered by housing development.
Subsector B-6-b: The northern and northeastern part of the subsector, south of Freeway 210 and west of Brampton Avenue is now covered by housing development.
Subsector B-7-b: The northern edge of the subsector is now covered by the State Route 210 Freeway.

Subsector B-12: This subsector is now covered by industrial development.
Subsector B-16: This subsector is now covered by industrial development.
Subsector B-17: This subsector is now covered by industrial development.
Subsector C-3-b: The subsector east of Little League Drive is now covered by urban development.
Subsector C-4-b: The subsector east of Little League Drive is now covered by urban development.
Subsector C-10-b: The subsector east of Cable Creek is now covered by housing development.
Subsector D-2: This subsector is now covered by industrial development.
Subsector D-3: This subsector is now covered by industrial development.
Subsector D-4: This subsector is now covered by industrial development.
Subsectors D-5: This subsector is now covered by industrial development.
Subsector D-6: This subsector is comprised of two subsectors, D-6-a and D-6-b, which are now covered by industrial development.
Subsector E-2-b: This subsector is now covered by industrial development.
Subsector E-4: This subsector is now covered by industrial development.
Subsectors E-5: This subsector is comprised of two subsectors, E-5-b and E-10-c, which are now covered by industrial development.
Subsectors E-10: This subsector includes three subsectors, E-10-c, E-10-d and E-10-e, just east of South Riverside Avenue and north of the Santa Ana River which are now covered by industrial development.
Subsector E-13-c: The subsector along the south side of Pellisier Road is now covered by industrial development.
Subsector E-14-b: The subsector along the south side of Pellisier Road is now covered by industrial development.
Subsector E-17-b: This subsector in and along the Santa Ana River from Freeway 395, south and west to the town of Rubidoux, is now covered by industrial development.
Subsector E-24-c: This subsector, along Crestmore Road, is now covered by housing development.
Subsector F-1: This subsector is mostly covered by urban development.
Subsector F-2-b: This subsector is now covered by housing development.
Subsector F-3-b: This subsector is now covered by housing development.
Subsectors F-4-a, F-4-b, F-4-c, and F-14-d: These subsectors are now covered by housing development.
Subsector F-5: This subsector is now covered by housing development.
Subsector F-6: This subsector includes subsectors F-6-c, F-6-d and F-6-e which are now covered by industrial development.
Subsector F-12: This subsector is now covered by industrial development.
Subsectors F-14-c and F-14-d: Parts of these subsectors are now covered by housing development.
Subsector F-15: This Sector includes subsectors F-15-d, F-15-e, F-15-f, F-15-g and F-15-h, which are now covered by housing and other urban development.
Subsector F-16-b: This subsector is now covered by industrial development.
Subsector F-17-b: This subsector is now covered by industrial development.
Subsector F-20-b: This subsector is now covered by industrial development.
Sector F-23: This subsector includes subsectors F-23-c and F-23-d, which are now covered by industrial development and a bridge.
Sector F-32-b: This subsector is now covered by industrial development and a bridge.
Sector G: This Sector includes three subsectors, G-1-d, G-1-e and G-1-f, covering parts of the San Gorgonio River alluvial fan, northeast of the City of Banning, and extends from the mouth of Banning Canyon. These subsectors are now covered by housing and other urban development.
Sector H: This Sector is now depleted.
Sector I: This subsector is now covered by housing and other urban development.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-2763 and 2790-2792, Public Resources Code.

HISTORY

1. New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49).
2. Amendment filed 6-11-2014; operative 10-1-2014 (Register 2014, No. 24).

§ 3550.9. Construction Aggregate Resources, Saugus-Newhall and Palmdale Regions.

A set of maps identifying the exact locations of the designated resources areas, entitled "Regionally Significant Construction Aggregate Resources Areas in Saugus – Newhall and Palmdale Production-Consumption Region, is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.* The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – Portions of the Santa Clara River and its immediate floodplain extending from the Los Angeles County Line to Bee Canyon, parts of Castiac Creek, and Oak Spring Canyon.

Sector B – An area bounded by Bee Canyon on the northwest, the Santa Clara River to the south, and extending approximately one mile east of the Agua Dulce Canyon; and a triangle-shaped area with a boundary extending from the mouth of Pole Canyon west along an old railroad grade, south to Oak Spring Canyon then northeast back to the mouth of Pole Canyon.

Sector C – A triangular area beginning at the mouth of Pole Canyon, running southeast along the canyon to Oak Spring Canyon then southwest to Coyote Canyon, turning northeast to close the triangle back at the mouth of Pole Canyon.

Sector D – An area north of the California Aqueduct whose eastern boundary is along Little Rock Wash then turns west approximately one mile north of Boundary Avenue. The western boundary runs south near 47th Street and Fort-Tejon Road.

Sector E – An area of the Big Rock Wash bounded by the aqueduct on the south, North 165th Street on the east, Palmdale Boulevard on the north, and 116th Street on the west.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public Resources Code.

HISTORY

1. *New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49). *Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.10. Construction Aggregate Resources, South San Francisco Bay Region.

A set of maps identifying the exact locations of the designated resources areas, entitled "Regionally Significant Construction Aggregate Resources Areas in South San Francisco Bay Production-Consumption Region, is incorporated by reference into this regulation.

These maps are available from the State Mining and Geology Board's office in Sacramento.

Sector A – Aggregate deposit located in Amador Valley and Livermore Valley areas in the cities of Pleasanton and Livermore in Alameda County.

Sector B – Alluvial deposit consisting of six parcels along Arroyo del Valle on the southwestern edge of Livermore in Alameda County.

Sector C – Alluvial deposit consisting of six parcels located along Arroyo Mucho on the eastern edge of Livermore in Alameda County.

Sector D – Greenstone deposit located on Apperson Ridge east of Sunol Valley in Alameda County.

Sector E – Alluvial deposit consisting of five parcels in Sunol Valley in southern Alameda County.

Sector H – Elongated sandstone deposit located on the foothills of the cities of Fremont and Union City.

Sector I – Elongated series of parcels consisting of a sandstone deposit along the foothills east of the cities of Fremont and Milpitas.

Sector J – Alluvial deposit located near Mowry Landing on the southern edge of Fremont in Alameda County.

Sector K – Alluvial deposit located west of Highway 17 on the southern edge of Fremont in Alameda County.

Sector L – Alluvial deposit consisting of three parcels located between the Nimitz Freeway, Alameda Creek, the Coyote Hills, and Jarvis Avenue in the northwestern portion of the City of Fremont in Alameda County.

Sector M – Located at the southern end of the Coyote Hills on the west side of Fremont in Alameda County.

Sector N – Greenstone deposit in the foothills east of the City of Hayward in Alameda County.

Sector O – Consists of greenstone and rhyolite located in the Berkeley Hills west of Lake Chabot in Alameda County.

Sector P – Consists of rhyolite located north of the oak Knoll Naval Hospital in the Berkeley Hills.

Sector S – Mount Zion and a smaller adjacent hill in central Contra Costa County.

Sector T – Consists of basalt and andesite located at the south end of Gudde Ridge in the City of Moraga in southwestern Contra Costa County.

Sector U – Consists of basalt and andesite located on a small ridge southwest of the City of Orinda in Contra Costa County.

Sector V – Consists of basalt and andesite located on a small ridge southwest of the city of Orinda in Costa Contra County.

Sector W – Sandstone and shale deposit consisting of three parcels located on the west side of the City of Richmond in Contra Costa County.

Sector X – The Guadalupe Quarry property on the north side of Mount San Bruno adjacent to the City of Brisbane in San Mateo County.

Sector Y – Limestone and greenstone deposits located west of Pacifica near Rockway Beach in northern San Mateo County.

Sector Z – Greenstone deposit located in the Los Altos Hills in northwestern Santa Clara County.

Sector BB – Limestone deposit located west of the City of Cupertino on upper Permanente Creek in Santa Clara County.

Sector CC – Greenstone deposit located northwest of Stevens Creek Reservoir on the western edge of the City of Cupertino in Santa Clara County

Sector DD – Conglomerate deposit located northwest of Stevens Creek Reservoir west of the City of Cupertino in Santa Clara County.

Sector EE – Located immediately northwest of the intersection of Capitol Expressway and Monterey Road (Highway 82) on the City of San Jose in Santa Clara County.

Sector GG – Sandstone deposit located approximately four miles south of Brentwood in eastern Contra Costa County.

Sector HH – Granitic rock deposit located northwest of the City of Half Moon Bay in western San Mateo.
Sector II – Sandstone and siltstone deposit located in Limekiln Canyon east of Lexington Reservoir in southwestern Santa Clara County.

Sector LL – Sandstone deposit located in the foothills east of the City of Fremont in Alameda County.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761 – 63 and 2790-92, Public Resources Code.

HISTORY

1. *New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49). *Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.11. Construction Aggregate Resources, North San Francisco Bay Region.

A set of maps identifying the exact locations of the designated resources areas, entitled "Regionally Significant Construction Aggregate Resources Areas in North San Francisco Bay Production-Consumption Region, is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – Channel and floodplain alluvium deposits located in Alexander Valley of Sonoma County; extends from approximately the City of Cloverdale downstream to a point 3.25 miles southeast of the community of Jimtown.

Sector B – Alluvial deposits of the middle reach of the Russian River and a small portion of Dry Creek 0.5 miles west of Healdsburg. The sector extends from the City of Healdsburg down the Russian River to a point near the Wohler Road Bridge.

Sector C – Alluvial deposits restricted to two small portions of Sonoma Creek. The first is about one mile south of Sonoma State Hospital, and the second is about one mile south of Boyes Hot Springs.

Sector D – Consists of Novato Conglomerate deposits located near Black Point in eastern Marin County.

Sector E – A small basalt deposit located on Petaluma Hill near the southeastern edge of the City of Petaluma in Sonoma County.

Sector F – A small aggregate deposit located west of the City of Cotati on Stony Point Road in Sonoma County.

Sector G – Three contiguous parcels consisting of metamorphosed graywacke and greenstone deposits located east of the City of Vallejo at the southern end of Sulphur Springs Mountain.

Sector H – Aggregate deposit located southeast of the City of Napa in Napa County.

Sector I – Metamorphosed sandstone deposit located on Point San Pedro in eastern Marin County.

Sector J – A large block of andesite located on Burdell Mountain approximately two miles north of the City of Novato in Marin County.

Sector K – Two areas east of Dunbar Union School and northeast of the community of Glen Ellen in Sonoma County.

Sector L – Small greenstone and pillow lavas deposits located in Millerton Gulch approximately 3.5 miles north of the community of Point Reyes Station in Marin County.

Sector M – A small serpentine deposit located in upper Bowman Canyon on Burdell Mountain approximately three miles northwest of Novato in Marin County.

Sector N – A small siltstone deposit located approximately one mile west of the community of Forestville and south of Highway 116.

Sector O – A small siltstone located approximately one mile west of the community of Forestville and north of Highway 116.

Sector P – Located along the west side of Green Valley approximately three miles southwest of Forestville in Sonoma County.

Sector Q – Sandstone deposit located in Cheney Gulch approximately 2.5 miles east of Bodega Bay in western Sonoma County.

Sector R – Located approximately 2.5 miles southeast of the City of Petaluma in Sonoma County.

Sector S – Located approximately five miles west of Petaluma on Petaluma Creek Road in Sonoma County.

Sector T – Sandstone deposits located 1.5 miles north of Duncan Mills on Austin Creek in western Sonoma County.

Sector U – Located at the confluence of the South Fork and Wheatfield Fork of the Gualala River in northwestern Sonoma County.

Sector V – Consists of andesite located on Burdell Mountain approximately two miles north of the City of Novato in Marin County.

Sector W – Located on Porter Creek Road approximately four miles east of the community of Mark West Springs in eastern Sonoma County.

Sector X – Consists of sandstone and andesite located along Highway 121 approximately 2.5 miles north of Sears Point in southeastern Sonoma County.

Sector Y – Shale deposit located approximately 2.5 miles west of Healdsburg in Sonoma County.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public Resources Code.

HISTORY

1. *New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49). *Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.12. Construction Aggregate Resources, Monterey Bay Region.

A set of maps identifying the exact locations of the designated resources areas, entitled "Regionally Significant Construction Aggregate Resources Areas in Monterey Bay Production-Consumption Region, is incorporated by reference into this regulation. These maps are available from the State Minng and Geology Board's office in Sacramento.*

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – Consists of quartz diorite located on Ben Lomond Mountain southwest of Felton in Santa Cruz County.

Sector B – Consists of sandstone deposit divided into three large non-contiguous parcels located east of Felton in Santa Cruz County.

Sector C – Sandstone deposit located near Wilder Ranch west of the City of Santa Cruz.

Sector D – Alluvial deposit located in a portion of Uvas Creek located west of Gilroy in southern Santa Clara County.

Sector E – Channel and floodplain deposits located in a long portion of the San Benito County.

Sector F – Two elongated deposits located near the community of Aromas in western San Benito County, extending from State Highway 101 northwesterly to Pajaro Gap on Highway 129, a distance of approximately five miles.

Sector G – The Natividad Quarry located northeast of Salinas in Monterey County.

Sector H – Sand deposits in two separate but adjacent parcels located along the southern portion of Monterey Bay, north of the City of Marina.

Sector I – A large sand dune area located on the northern edge of the City of Marina in Monterey County.

Sector J – Quartz diorite located on Huckleberry Hill on the east side of the community of Pebble Beach in Monterey County.

Sector K – Stream channel and floodplain deposits consisting of a one mile long portion of the lower Carmel River in the Carmel Valley of Monterey County.

Sector L – Consists of quartz diorite and siltstone located on upper Soquel Creek on the east side of Sugarloaf Mountain in Santa Cruz County.

Sector M – Fluvial sand and gravel deposit located on Freedom Boulevard approximately seven miles northwest of Watsonville in southern Santa Cruz County.

Sector N – Located at the confluence of Chalone Creek with the Salinas River in southern Monterey County, approximately three miles southwest of the community of Greenfield, northeast of the Southern Pacific Railroad tracks.

Sector O – Located at the confluence of Chalone Creek with the Salinas River in southern Monterey County, approximately three miles southwest of the community of Greenfield.

Sector P – Stream channel and floodplain deposits of San Lorenzo Creek located in the foothills of the Gabilan Range in southern Monterey County, approximately six miles northwest of King City.

Sector U – Stream channel and floodplain deposits of Upper Pacheco Creek located near Bells Station in southeastern Santa Clara County.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public Resources Code.

HISTORY

1. *New section filed 12-3-86, effective thirtieth day thereafter (Register 86, No. 49). *Copies of the maps incorporated by this section accompanied the text which was filed with Secretary of State on 12-3-86.*

§ 3550.13. Construction Aggregate Resources, Fresno Production-Consumption Region.

A set of maps identifying the exact locations of the designated resource areas, entitled "Regionally Significant Construction Aggregate Resource Areas in the Fresno Production-Consumption Region," is incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector K – Alluvial deposits of the Kings River between Avocado Lake on the northeast and the Southern Pacific Railroad tracks on the southwest.

Sector S – Portions of the San Joaquin River floodplain between Friant Dam and Highway 99.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2726, 2761-63 and 2790-92, Public Resources Code.

HISTORY

1. *New section filed 9-16-88; operative 10-16-88 (Register 88, No. 39).*
2. *Amendment of first paragraph filed 9-5-2000; operative 10-5-2000 (Register 2000, No. 36).*

§ 3550.14. Construction Aggregate Resources, Stockton-Lodi Production-Construction Region.

A map identifying the exact locations of the designated resource areas, entitled "Regionally Significant Construction Aggregate Resource Areas in the Stockton-Lodi Production-Consumption Region, 1989," is incorporated by reference into this regulation. This map is available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A – Aggregate deposits on the alluvial fan created by Corral Hollow Creek, situated south of the City of Tracy.

Sector B – Aggregate deposit on the alluvial fan created by Lone Tree Creek. Deposit extends from just west of Interstate 580 near the base of the Coast Range hills northwest to the alignment of Interstate 5.

Sector C – Aggregate deposit that consists of the alluvial fan formed by Hospital Creek. Deposit extends from west of Interstate 580 within the foothills of the Coast Range and east into the San Joaquin Valley.

Sector D – Sand deposit centered on the San Joaquin River near the intersection of Highway 120 and Interstate 5 west of the City of Manteca.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2762, 2761-63 and 2790-92, Public Resources Code.

HISTORY

1. *New section filed 6-29-89; operative 7-29-89 (Register 89, No. 27).*

§ 3550.15. Construction Aggregate Resources, Palm Springs Production-Consumption Region.

The areas for designation are shown on two plates: Updated Regionally Significant Construction Aggregate Resources Areas in the Palm Springs Production-Consumption Region, Riverside County, California (Western Area) - SMARA Designation Report Number 13 - Plate 1 - March 2013, and Updated Regionally Significant Construction Aggregate Resources Areas in the Palm Springs Production-Consumption Region, Riverside County, California (Eastern Area) - SMARA Designation Report Number 13 - Plate 2 - March 2013, and are incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following areas are designated as being of regional significance:

Sector A-1 - Aggregate deposits located adjacent to the southeast border of the community of Cabezon at the base of the San Jacinto Mountains.

Sector A-2 - Aggregate deposits located between the Colorado River Aqueduct and the Morongo Indian Reservation.

Sector B-1 - Aggregate deposit located at the mouth of the Whitewater Canyon north of Interstate 10.

Sector B-2-b - Aggregate deposit located immediately south of Interstate 10 at the intersection of Highway 62.

Sector B-3a - Aggregate deposit located immediately south of Sector B-2 and east of the San Gorgonio Pass to Garnet Hill.

Sector B-3-c - Aggregate deposit located immediately south of Sector B-2 and east of the San Gorgonio Pass to Garnet Hill.

Sector B-3-e - Aggregate deposit located immediately south of Sector B-2 and east of the San Gorgonio Pass to Garnet Hill.

Sector B-4 - Aggregate deposit located east of Indian Avenue and south of Garnet Hill.

Sector B-5-a - Aggregate deposit located south of Interstate 10.

Sector B-5-c - Aggregate deposit located adjacent to the northern border of Sector B-3 and the southern border of Interstate 10 near Garnet Hill.

Sector C-1 - Aggregate deposit located in the Little Morongo Canyon approximately one mile north of the City of Desert Hot Springs.

Sector D - Aggregate deposit located in a small unnamed wash in the foothills of the community of Thousand Palms (Plate 2, Inset Map B).

Sector E-1 - Aggregate deposit located northeast of Dillon Road, approximately six miles northeast of the City of Indio.

Sector E-2 - Aggregate deposit located approximately six miles northeast of the City of Indio.

Sector F - Aggregate deposit located approximately four miles northeast of the City of Indio.

Sector G-1 - Aggregate deposit located approximately three miles north of the City of Indio.

Sector G-2 - Aggregate deposit located approximately three miles north of the City of Indio

Sector G-3 - Aggregate deposit located approximately three miles north of the City of Indio

Sector H-1 - Aggregate deposit located approximately four miles east of the community of Thermal.

Sector H-2 - Aggregate deposit located northeast of the Coachella Canal approximately three and a half miles east of the community of Thermal.

Sector H-3 - Aggregate deposit located southwest of the Coachella Canal approximately three miles east of the community of Thermal.

Sector I - Aggregate deposits comprising part of Thermal Canyon wash, south of Interstate Highway 10, east of the Coachella Canal, and four miles northeast of the community of Thermal. Sector I is approximately one mile north of the previously designated Sectors H-1, H-2, and H-3 (Plate 2, Inset Map A).

Sector J - Aggregate deposits located near the community of Indio Hills that formed as a series of coalescing alluvial fans deposited from material discharged from canyons cut northward into the Little San Bernardino Mountains.

Sector J-4 - Aggregate deposits located north and east of the community of Indio Hills in Sections 1, 2, 11, and 12, T4S, R7E, SBBM. It is separated from Sector J-5 to the southeast by a public road and residential development in the community of Indio Hills.

Sector J-5 - Aggregate deposits located east of the community of Indio Hills in Sections 13, and 24, T4S, R7E; and Section 19, T4S, R8E, SBBM. It is separated from Sector J-4 to the northwest by a public road and urbanization in the community of Indio Hills, and from Sector J-6 to the south by Dillon Road and a utility easement. Sector J-5 is contiguous with Sector E-1, to the southeast.

Sector J-6 - Aggregate deposits located southeast of the community of Indio Hills in Sections 13 and 24, T4S, R7E, SBBM. It is separated from Sector J-5 to the north by Dillon Road and a utility easement. Sector J-6 is contiguous with Sector E-2, to the southeast.

Sector K-1 - Aggregate deposits located in Section 33, T4S, R7E, SBBM. It is bounded to the north by the Mission Creek Branch of the San Andreas Fault near the base of the south flank of the Indio Hills. It is adjacent to the original Sector G on the east. On the south it is bounded by a utility corridor, which separates it from Sector K-2.

Sector K-2 - Aggregate deposits located in Section 33, T4S, R7E, SBBM. It is bounded to the north by a utility corridor, which separates it from Sector K-1. On the south, it is bounded by a second utility corridor separating it from Sector K-3.

Sector K-3 - Aggregate deposits located in Section 33, T4S, R7E; and Section 3, T5S, R7E, SBBM. It is adjacent to the original Sector G on the east. It is bounded to the north by a utility corridor, which separates it from Sector K-2. On the south, it is bounded by agricultural land of the Coachella Valley.

Sector K-4 - Aggregate deposits located in Section 34, T4S, R7E, SBBM. It is bounded on the south by the Mission Creek Branch of the San Andreas Fault.

Sector K-5 - Aggregate deposits located in Sections 33, 34, and 35, T4S, R7E, SBBM. It is adjacent to the original Sector G on the south. On the north, it is bounded by the Mission Creek Branch of the San Andreas Fault, which separates it from Sector K-4.

Sector K-6 - Aggregate deposits located in Section 2, T5S, R7E, SBBM, east of the original Sector G. It is bounded by the Mission Creek Branch of the San

Andreas Fault on the north and a utility corridor to the south. Sector K-6 has less than the threshold amount of material within it; however, it could be mined in conjunction with Sector G.

Sector K-7 - Aggregate deposits located in Section 2, T5S, R7E, SBBM, southeast of the original Sector G. Utility corridors separate it from Sector K-6 to the north and Sector K-8 to the west.

Sector K-8 - Aggregate deposits located in Section 2, T5S, R7E, SBBM, southeast of the original Sector G. A utility corridor separates it from Sector K-7 to the east.

The construction aggregate deposits in the following areas are designated for termination of designation status due to high-value incompatible land use developments:

Sector A-3 - Aggregate deposits located directly south of Interstate 10 two miles east of the community of Cabazon.

Sector B-2-a - Aggregate deposit located immediately south of Interstate 10.

Sector B-3-b - Aggregate deposit located immediately south of Interstate 10 and north of the main line of the Southern Pacific Railroad.

Sector B-3-d - Aggregate deposit located immediately south of Interstate 10 and north of the main line of the Southern Pacific Railroad.

Sector B-5-b - Aggregate deposit located south of Interstate 10.

Sector C-2 - Aggregate deposit located in the Little Morongo Canyon approximately one mile north of the City of Desert Hot Springs.

NOTE

Authority cited: Section 2790 and 2793, Public Resources Code. Reference: Sections 2761-2763 and 2790-2792, Public Resources Code.

HISTORY

1. New section filed 11-13-89; operative 12-13-89 (Register 89, No. 46).

2. Amendment of section and Note filed 4-11-2014; operative 7-1-2014 (Register 2014, No. 15).

§ 3550.16. Construction Aggregates Resources, Bakersfield Production-Consumption Region.

The areas for designation are shown on two plates: Plate 1, *Candidate Areas for Designation in the Bakersfield Production-Consumption (P-C) Region, Kern County California, Northern Area (2009)*, and Plate 2, *Candidate Areas for Designation in the Bakersfield Production-Consumption (P-C) Region, Kern County California, Southern Area (2009)*, and are incorporated by reference into this regulation. These maps are available from the State Mining and Geology Board's office in Sacramento.

The construction aggregate deposits in the following area are designated as being of regional significance:

Candidate Sector A - Deposits of the James Road Resource Area, five miles north of Bakersfield and southwest of the intersection of James Road and State Highway 65, are in a small alluvial fan composed of reworked sediments derived from older alluvial fan deposits and the Kern River Formation. (Plate 1)

Candidate Sector A (247 acres) is in Sections 28 and 29, T28S, R27E, MDBM, five miles north of Bakersfield, west of State Route 65 and southwest of the intersection of James Road and State Route 65.

Candidate Sector Group B - Deposits of the Kern River floodplain and alluvial fan, north of State Route 58 (Rosedale Highway) and west of Highway 99. Sector B is divided into five subsectors identified as B-1 through B-5. The combined area of the subsectors of Sector B is 231 acres. (Plate 1)

Candidate Sector B-1 (108 acres) is in Sections 14 and 15, T29S, R27E, MDBM, northwest of Bakersfield, north of State Route 58 and west of Highway 99.

Candidate Sector B-2 (70 acres) is in Section 15, T29S, R27E, MDBM, west of Highway 99 and north of State Route 58.

Candidate Sector B-3 (24 acres) is in Section 22, T29S, R27E, MDBM, west of Highway 99 and north of State Route 58.

Candidate Sector B-4 (14 acres) is in Section 22, T29S, R27E, MDBM, west of Highway 99 and north of State Route 58.

Candidate Sector B-5 (15 acres) is in Section 22, T29S, R27E, MDBM, west of Highway 99 and north of State Route 58.

Candidate Sector Group C - Deposits of the Kern River floodplain along the main course of the Kern River from Coffee Road east to Rio Bravo Ranch. Sector C is divided into 21 subsectors identified as C-1 through C-21. The combined area of Group C subsectors is 1,418 acres. (Plate 1)

Candidate Sector C-1 (20 acres) is in Section 33, T29S, R27E, MDBM, north of Kern River, west of Highway 99 and south of State Route 58.
Candidate Sector C-2 (149 acres) is in Sections 27, 33 and 34, T29S, R27E, MDBM, west of Highway 99 and south of State Route 58.
Candidate Sector C-3 (8 acres) is in Section 27, T29S, R27E, MDBM, west of Highway 99 and south of State Route 58.
Candidate Sector C-4 (51 acre) is in Sections 26 and 27, T29S, R27E, MDBM, west of Highway 99 and south of State Route 58.
Candidate Sector C-5 (36 acres) is in Sections 23, 24 and 26, T29S, R27E, MDBM, east of Highway 99 and west of State Route 204.
Candidate Sector C-6 (18 acres) is in Section 24, T29S, R27E, MDBM, east of Highway 99 and west of State Route 204.
Candidate Sector C-7 (14 acres) is in Sections 13 and 24, T29S, R27E, MDBM, east of State Route 204 and west of Chester Ave.
Candidate Sector C-8 (46 acres) is in Section 13, T29S, R27E, MDBM, and Section 18, T29S, R28E, MDBM, east of State Route 204 and west of Chester Ave.
Candidate Sector C-9 (85 acres) is in Section 18, T29S, R28E, MDBM, east of Chester Avenue and west of Manor St.
Candidate Sector C-10 (15 acres) is in Section 18, T29S, R28E MDBM, east of Chester Avenue and west of Manor St.
Candidate Sector C-11 (124 acres) is in Sections 8, 17 and 18, T29S, R28E, MDBM, east of Manor St.
Candidate Sector C-12 (104 acres) is in Sections 7 and 8, T29S, R28E, MDBM, north of Kern River and East of Manor St.
Candidate Sector C-13 (26 acres) is in Section 8, T29S, R28E, MDBM, north of Kern River, east of Manor Street.
Candidate Sector C-14 (163 acres) is in Sections 8, 9, 16 and 17, T29S, R28E, MDBM. Kern River, east of Manor St.
Candidate Sector C-15 (32 acres) is in Section 9, T29S, R28E, MDBM. Kern River, east of Manor St.
Candidate Sector C-16 (12 acres) is in Section 9, T29S, R28E, MDBM. Kern River, west of China Grade Bridge.
Candidate Sector C-17 (101acres) is in Section 10, T29S, R28E, MDBM, south of Kern River and north of Alfred Harrell Highway.
Candidate Sector C-18 (70 acres) is in Sections 2, 3 and 10, T29S, R28E, MDBM. Kern River, south of Round Mountain Rd.
Candidate Sector C-19 (80 acres) is in Section 36, T28S, R28E, MDBM, Section 31, T28S, R29E, MDBM, and Section 6, T29S, R29E MDBM, northeast of Kern River and east of Hart Memorial Park.
Candidate Sector C-20 (11 acres) is in Section 5, T29S, R29E, MDBM, south of Kern River and north of Alfred Harrell Highway.
Candidate Sector C-21 (253 acres) is in Sections 33 and 34, T28S, R29E, MDBM, and Sections 2, 3, 10 and 11, T29S, R29E, MDBM, north of Kern River and east of Kern River Golf Course.
Candidate Sector Group D - Deposits of the floodplain and alluvial fan of Cottonwood Creek, ten miles east of Bakersfield, south of State Highway 178. Sector D is divided into four subsectors identified as D-1 through D-4. The combined area of the subsectors is 356 acres. (Plate 1)
Candidate Sector D-1 (105 acres) is in Sections 19 and 20, T29S, R30E, MDBM. Cottonwood Creek, south of Breckenridge Road.
Candidate Sector D-2 (19 acres) is in Section 24, T29S, R29E, MDBM. Cottonwood Creek, south of Breckenridge Road.
Candidate Sector D-3 (101 acres) is in Sections 12, 13 and 24, T29S, R29E, MDBM. Cottonwood Creek, south of State Route 178.
Candidate Sector D-4 (131 acres) is in Sections 1, 11 and 12,, T29S, R29E, MDBM. Cottonwood Creek, south of State Route 178 and north of Breckenridge Road.
Candidate Sector Group E - Deposits of the floodplain of Caliente Creek, 15 to 20 miles east of Bakersfield, north of State Highway 58. Sector E is divided into 10 subsectors identified as E-1 through E-10. The combined area of the subsectors is 2,685 acres. (Plate 1)
Candidate Sector E-1 (572 acres) is in Sections 17, 18, 19 and 20, T30S, R30E, MDBM. Caliente Creek, south of State Route 58.

Candidate Sector E-2 (1,330 acres) is in Sections 9, 10, 14, 15, 16, 17, 20 and 21, T30S, R30E, MDBM (Rancho El Tejon). Caliente Creek, north of State Route 58.
Candidate Sectors E-3 (357 acres) is in Sections 9, 10, 11, 12, 13 and 14, T30S, R30E, MDBM (Rancho El Tejon). Caliente Creek, north of Bena Road.
Candidate Sector E-4 (171 acres) is in Sections 13 and 24, T30S, R30E, MDBM, and Sections 18, 19 and 20, T30S, R31E, MDBM (Rancho El Tejon). Caliente Creek, north of Bena Road.
Candidate Sector E-5 (18 acres) is in Sections 13, T30S, R30E, MDBM, and Section 18 T30S, R31E, MDBM (Rancho El Tejon). Caliente Creek, north of Bena Road.
Candidate Sector E-6 (8 acres) is in Section 19, T30S, R31E, MDBM (Rancho El Tejon). Caliente Creek, south of Bena Road.
Candidate Sector E-7 (11 acres) is in Section 27, T30S, R31E, MDBM. Caliente Creek, west of Caliente.
Candidate Sector E-8 (45 acres) is in Section 27, T30S, R31E, MDBM. Caliente Creek, west of Caliente.
Candidate Sector E-9 (24 acres) is in Section 26, T30S, R31E, MDBM. Caliente Creek, south of Caliente.
Candidate Sector E-10 (149 acres) is in Sections 24, 25 and 26, T30S, R31E, MDBM, and Section 19, T30S, R32E, MDBM. Caliente Creek, east of Caliente.
Candidate Sector Group F - Deposits of the alluvial fan of San Emigdio Creek, 25 miles southwest of Bakersfield, north and south of State Highway 166. Sector F is divided into eleven subsectors identified as F-1 through F-11. The combined area of the subsectors is 11,271 acres. (Plate 2)
Candidate Sector F-1 (289 acres) is in Sections 34, 35, and 36, T12N, R22W, MDBM, and Sections 1, 2 and 3, T11N, R22W, SBBM. San Emigdio Creek, north of the California Aqueduct.
Candidate Sector F-2 (44 acres) is in Section 36, T12N, R22W, SBBM, Section 6, T11N, R21W, SBBM, and Section 1 T11N, R22W, SBBM. San Emigdio Creek, north of the California Aqueduct.
Candidate Sector F-3 (782 acres) is in Sections 1, 2 and 3, T11N, R22W, SBBM, and Sections 5 and 6, T11N, R21W, SBBM. San Emigdio Creek, south of the California Aqueduct and north of State Route 166.
Candidate Sector F-4 (142 acres) is in Section 1 T11N, R22W, SBBM, and Sections 5 and 6, T11N, R21W, SBBM. San Emigdio Creek, south of the California Aqueduct and north of State Route 166.
Candidate Sector F-5 (1,468 acres) is in Sections 1, 2, 3, 10, 11, and 12, T11N, R22W, SBBM, and Sections 5, 6, 7 and 8, T11N, R21W, SBBM. San Emigdio Creek south of the California Aqueduct and north of State Route 166.
Candidate Sector F-6 (347 acres) is in Sections 10, 11 and 12, T11N, R22W, SBBM. San Emigdio Creek, south of State Route 166.
Candidate Sector F-7 (183 acres) is in Sections 7 and 8, T11N, R21W, SBBM. San Emigdio Creek, south of State Route 166.
Candidate Sector F-8 (2,254 acres) is in Sections 10, 11, 12, 13, 14 and 15, T11N, R22W, SBBM. San Emigdio Creek, south of State Route 166.
Candidate Sector F-9 (1,566 acres) is in Sections 7, 8, 17 and 18, T11N, R21W, SBBM. San Emigdio Creek, south of State Route 166.
Candidate Sector F-10 (3,356 acres) is in Sections 22, 23, 24, 25, 26, 35 and 36, T11N, R22W, SBBM, Sections 30 and 31, T11N, R21W, and Sections 1 and 2, T10N, R22W, SBBM. San Emigdio Creek, south of State Route 166.
Candidate Sector F-11 (840 acres) is in Sections 19, 20, 29 and 30, T11N, R21W, SBBM. San Emigdio Creek, south of State Route 166.
Candidate Sector G - Deposits of Wheeler Ridge, 25 miles south of Bakersfield, west of Interstate Highway 5, and south of State Highway 166. The deposits are in an uplifted ridge of Pleistocene sand and gravel of the Tulare Formation. The area of Sector G is 882 acres. (Plate 2)
Candidate Sector G (882 acres) is in Sections 25, 35, and 36, T11N, R20W, SBBM and Sections 30 and 31, T11N, R19W, SBBM, at Wheeler Ridge, west of Highways I-5 and 99.

Candidate Sector Group H - Deposits of the alluvial fan of Pastoria Creek, 30 miles southeast of Bakersfield, and north of Edmonston Pumping Plant Road. Sector H is divided into five subsectors identified as H-1 through H-5. The combined area of the subsectors is 467 acres. (Plate 2)
Candidate Sector H-1 (35 acres) is in Sections 18 and 19, T10N, R18W, SBBM, (projected - in Rancho El Tejon). Pastoria Creek, south of the California Aqueduct and Edmonston Pumping Plant Road.
Candidate Sector H-2 (48 acres) is in Section 19, T10N, R18W, SBBM, (projected - in Rancho El Tejon). Pastoria Creek, south of the California Aqueduct and Edmonston Pumping Plant Road.
Candidate Sector H-3 (47 acres) is in Sections 18 and 19, T10N, R18W, SBBM, (projected - in Rancho El Tejon). Pastoria Creek, south of the California Aqueduct and Edmonston Pumping Plant Road.
Candidate Sector H-4 (108 acres) is in Sections 12 and 13, T10N, R19W, SBBM, and Section 18 T10N, R18W, SBBM, (projected - Rancho El Tejon). Pastoria Creek, north of the California Aqueduct and Edmonston Pumping Plant Road.
Candidate Sector H-5 (409 acres) is in Sections 12 and 13, T10N, R19W, SBBM, and Sections 7 and 18, T10N, R18W, SBBM (projected - in Rancho El Tejon). Pastoria Creek, north of the California Aqueduct and Edmonston Pumping Plant Road.
Candidate Sector I - Deposits of the alluvial fan of El Paso Creek, 25 miles southeast of Bakersfield, east of Rancho Road and south of Sebastian Road. The area of Sector I is 2,151 acres. (Plate 2)
Candidate Sector I (2,151 acres) is in Sections 16, 17, 18, 19, 20, 21, 28, 29 and 30, T11N, R18W, SBBM. El Paso Creek east of Rancho Drive and south of Sebastian Road.
Candidate Sector Group J - Deposits of the floodplain of Cuddy Creek located 40 miles south of Bakersfield, along Frazier Mountain Park Road, two miles west of Interstate Highway 5. Sector J is divided into two subsectors identified as J-1 and J-2. The combined area of the subsectors is 180 acres. (Plate 2)
Candidate Sector J-1 (35 acres) is in Sections 31 and 32, T9N, R19W, SBBM. Cuddy Creek, east of Frazier Park, south of Frazier Mountain Park Road.
Candidate Sector J-2 (145 acres) is in Sections 32 and 33, T9N, R19W, SBBM. Cuddy Creek, east of Frazier Park, south of Frazier Mountain Park Road.
Candidate Sector K - Basement outcrops and the alluvial fan and floodplain of Little Sycamore Creek (La Liebre Ranch area), 40 miles southeast of Bakersfield, east of Interstate Highway 5 and north of State Highway 138. The area of Sector K is 125 acres. (Plate 2)
Candidate Sector K (125 acres) is in Sections 29 and 32, T9N, R17W, SBBM, (projected - in Rancho La Liebre), Little Sycamore Canyon.

NOTE

Authority cited: Section 2790, Public Resources Code. Reference: Sections 2207, 2726, 2761-2763 and 2790-2791, Public Resources Code.

HISTORY

1. New section filed 8-30-2011; operative 9-29-2011 (Register 2011, No. 35).

Article 4. Designation Appeal Procedures

§ 3625. Purpose of Regulations. The regulations contained in this article govern procedures affecting appeals to the board on the approval or denial of a permit to conduct surface mining operations by a city or county, hereinafter referred to as the “lead agency,” in an area designated as containing mineral deposits of statewide or regional significance pursuant to the provisions of Section 2775, Public Resources Code (PRC 2775).

NOTE

Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

§3626. Filing of Intent to Appeal. (a) Any person filing an appeal to the Board pursuant to PRC 2775 shall, within 15 days of exhausting his or her rights to appeal in accordance with the procedures of the lead agency, file an intent to appeal by submitting the following information. Failure to submit all the required, completed documents to the Board within the 15 days filing period will result in an incomplete filing of intent and an automatic rejection of the appeal.

(1) A map indicating the exact location of the disputed area, including township and range, and corresponding to the designation map prepared for the region;

(2) Written statements with supporting documentation indicating the basis for the appellant's challenge to the decision by the lead agency either to approve or deny a permit to mine in an area designated as being of statewide or regional significance.

(3) Copy of notice to the lead agency that the appellant has filed an intent to appeal to the Board.

NOTE

Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

HISTORY

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30)*
2. *Amendment of subsection (a) filed 9-19-2002; operative 10-19-2002 (Register 2002, No. 38).*

§ 3627. Determination of Jurisdiction.

The Chairman of the Mining and Geology Board, or the Chairman's designee, based upon the information submitted pursuant Section 3626 of this article, shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises substantial issues with respect to the action taken to approve or deny the permit to conduct surface mining operations by the lead agency. The Chairman of the Board, or the Chairman's designee, shall make such determination within 15 days of receipt of the information required by Section 3626 of this article, and shall notify the appellant and the lead agency of the determination by certified mail.

If the Chairman finds, based upon the criteria stated in (a), (b) or (c) below, that the appeal raises no substantial issues with respect to the action taken by the lead agency to approve or deny the permit to conduct surface mining operations in a designated area, he or she shall refuse to grant a hearing on an appeal. In making this determination, the Chairman, or the Chairman's designee, shall consider the following:

(a) Whether the appeal raises any issues which legally can be addressed by the Board within the limits of the Public Resources Code and the rules of the Board; and

(b) Whether the appeal specifically relates to the approval or denial of a permit to conduct surface mining operations in an area designated by the Board as being of statewide or regional significance.

(c) Whether the appeal is that of a lead agency's reconsideration of an appeal previously remanded by the board to that lead agency, and the appellant's challenge raises no new substantial issues with respect to the action taken by the lead agency to approve or deny the permit to conduct surface mining operations.

NOTE

Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

HISTORY

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30)*
2. *Amendment filed 9-19-2002; operative 10-19-2002 (Register 2002, No. 38).*

§ 3628. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit to the board within 30 days of receipt of notification three certified copies for the complete administrative record, which shall include, but not be limited to, all of the following information.

(1) Project application and complete, detailed description of the proposed project, including conditions added for mitigation of environmental impacts;

(2) Location and site description maps submitted to the lead agency as part of the application process;

(3) All reports, findings, communications, correspondence, and statements in the file of the lead agency relating to the project; and

(4) Written transcripts of all public hearings related to the decision of the lead agency.

(b) In cases where the appellant is faced with substantial delay in gathering the administrative record due to internal procedures of the lead agency, the appellant shall so notify the Board in writing and the Board may require the lead agency to immediately submit three copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(c) Failure to produce the administrative record upon request of the Board within 30 days shall be deemed

grounds to remand the appeal to the lead agency for reconsideration.

NOTE

Authority cited: Section 2772, 2773, Public Resources Code. Reference: Section 2775, Public Resources Code.

HISTORY

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*
2. *Amendment filed 9-19-2002; operative 10-19-2002 (Register 2002, No. 38).*

§ 3629. Hearing Procedures-Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 30 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. In no case shall the hearing be scheduled beyond 180 days of the receipt of the complete administrative record without the concurrence of the Board, the appellant, and the project proponent (when not the same person as the appellant). The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board.

NOTE

Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

HISTORY

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

§ 3630. Hearing Procedures-Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least two members to be appointed for that hearing by the Chairman of the Board. The Chairman of the Board or the Chairman's designee shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at its next regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3634 of these regulations.

NOTE

Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

HISTORY

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

§ 3631. Hearing Procedures-Notice.

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing the notice to the lead agency, the appellant, and the project proponent (when not the same person as the appellant);

(2) Mailing the notice to any person who requests notice of the appeal or hearing;

(3) Mailing the notice to the Board's regular mailing list; and

(4) Posting of the notice in a place where notices are customarily posted in the city or county jurisdiction within which the proposed surface mining operations are to take place.

(b) The notice of hearing shall include the following:

(1) The name of the appellant;

(2) Identification of the proposed surface mining operation, a brief description of the location of the operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement that the appellant has appealed the lead agency's decision to approve or deny the project and has requested the Board hear the appeal;

(4) A statement inviting the appellant, the lead agency, the project proponent (when not the same person as the appellant), and the public to make statements at the hearing regarding the decision of the lead agency; and

(5) The time, date, and location of the public hearing.

NOTE

Authority cited: Section 2775, Public Resources Code. Reference: Section 2775, Public Resources Code.

HISTORY

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

§ 3632. Hearing Procedures-Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3626 and 3628 of this article.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2755, Public Resources Code.

HISTORY

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

§ 3633. Hearing Procedures-Sequence.

(a) The public hearing should normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the appellant;

(3) Statements on behalf of the lead agency;

(4) Statements on behalf of the project proponent (when not the same person as the appellant);

(5) Statements on behalf of the public;

(6) Rebuttal on behalf of the appellant; and

(7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted to the Board at least five days prior to the hearing.

(d) The public hearing shall be recorded either electronically or by other convenient means.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2755, Public Resources Code.

HISTORY

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

§ 3634. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, upon the record before it, the lead agency decision was made based on substantial evidence in light of the whole record. Notification of the Board's determination shall be made by certified mail to the appellant, the lead agency, and the project proponent (when not the same person as the appellant) within 15 days following the regular business meeting of the Board at which the decision is made.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2755, Public Resources Code.

HISTORY

1. *New section filed 7-6-88; operative 8-5-88 (Register 88, No. 30).*

Article 5. Reclamation Plan Appeals

§ 3650. Filing of Intent to Appeal.

Any person filing an appeal to the Board pursuant to PRC 2770 shall, within 15 days of exhausting his or her rights to appeal in accordance with the procedures of the lead agency, file an intent to appeal by submitting the following information. Failure to submit all the required, completed documents to the board within the 15 days filing period will result in an incomplete filing of intent and an automatic rejection of the appeal.

(a) A map indicating the exact location of the surface mining operation, including township and range.

(b) A copy of all documents which together were proposed to serve as the reclamation plan and which were submitted to the lead agency for review and approval pursuant to PRC 2770.

(c) Written statements with supporting documentation indicating the basis for the appellant's challenge of:

(1) the lead agency's action to deny approval of the reclamation plan submitted pursuant to PRC 2770; or

(2) the lead agency's failure to act according to due process; or

(3) the lead agency's failure to act within a reasonable period of time of submittal of a completed application.

(A) failure to act means a lead agency’s inaction in processing the reclamation plan through its successive steps as provided for in the lead agency’s surface mining and reclamation ordinance adopted pursuant to PRC Section 2774, and as provided for in PRC Section 2774(c).

(B) Reasonable time means the time period specified in the lead agency’s surface mining and reclamation ordinance, or that which is mutually agreed upon by the applicant and the lead agency. Where no times are specified in the lead agency’s ordinance, then the interval between successive review steps shall not exceed 60 days.

(d) Copy of notice to the lead agency that the appellant intends to file an appeal to the Board.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Section 2770(c)-(e), Public Resources Code.

HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*
2. *Amendment of first paragraph and new subsections (c)(3)(A)-(B) filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3651. Determination of Jurisdiction.

The Chairman of the Mining and Geology Board, or the Chairman's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises substantial issues related to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770. If the Chairman finds, based upon the criteria stated in (a) plus (b) below, that the appeal raises no substantial issues with respect to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770, he or she shall refuse to grant a hearing on the appeal. In making these determinations, the Chairman shall consider the following:

(a) Whether the appeal raises any issues which can legally be addressed by the Board within the limits of PRC 2770(e) and the rules of the Board; and

(b) Whether the appeal specifically relates to the lead agency's review of reclamation plans submitted for surface mining operations pursuant to the provisions of PRC 2770.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Section 2770(c)-(e), Public Resources Code.

HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No.2)*
2. *Change without regulatory effect amending first paragraph and subsection (a) filed 5-1-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 18).*
3. *Change without regulatory effect amending first paragraph and subsection (b) filed 8-9-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 32).*

§ 3652. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit to the Board within 30 days of receipt of notification three certified copies of the complete administrative record, which shall include, but not be limited to, all of the following information:

(1) All documents which together are proposed to serve as the reclamation plan and which were submitted to the lead agency for review and approval pursuant to PRC 2770;

(2) Location and site description maps submitted to the lead agency as part of the reclamation plan application;

(3) Environmental documentation prepared pursuant to the provisions of the California Environmental Quality Act (CEQA), PRC Sections 21000 et seq., including conditions added for mitigation of environmental impacts, if any;

(4) A copy of the lead agency surface mining and reclamation ordinance under which the reclamation plan may have been judged pursuant to PRC 2770;

(5) All reports, findings, communications, correspondence, and statements in the file of the lead agency relating to the proposed reclamation plan; and

(6) Written transcripts of all public hearings related to the lead agency review for approval of the reclamation plan pursuant to PRC Section 2770.

(b) Should the lead agency choose not to complete an environmental review of the project pursuant to the provisions of CEQA, or should the Board deem such review inadequate under the provisions of CEQA, the record will not be considered complete until an adequate CEQA review is completed.

(1) In those instances in which the Board is the CEQA lead agency, the Board shall be responsible for the preparation of new or supplemental environmental documents.

(2) Pursuant to PRC Section 15045, the project proponent shall bear any costs relating to preparation and completion of any required environmental documents.

(c) Failure of the appellant to request in writing the administrative record from the lead agency within 10 days of receiving notification of the Board’s acceptance of the appeal may be deemed grounds for dismissal of the appeal.

(d) If the appellant is unable to obtain the administrative record from the lead agency within 15 days, the appellant shall so notify the Board in writing

and the Board may require the lead agency to immediately submit three copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(e) Failure of the lead agency to produce the administrative record upon request of the Board within 30 days shall be deemed grounds for Board action based on information provided solely by the appellant.

(f) Following production of the administrative record by the lead agency, failure of the appellant to produce the administrative record upon the request of the Board within 10 days may be deemed grounds for dismissal of the appeal.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 21000 et seq., Public Resources Code; and Section 15000 et seq., California Code of Regulations.

HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*
2. *Amendment filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3653. Technical Review for Adequacy of Reclamation Plan.

(a) The Board may consult with the technical staff of the Department of Conservation for determination of the adequacy or reclamation plans prepared for surface mining operations that are appealed to the Board. Preliminary determination of technical adequacy shall be based on, but shall not be limited to, the following:

(1) Substantial compliance with the requirements of PRC Sections 2772 and 2773;

(2) Substantial compliance with the requirements of Board rules and regulations (14 CCR Sections 3500 et seq. and Sections 3700 et seq.);

(3) Substantial compliance with the reclamation provisions of the lead agency surface mining and reclamation ordinance as certified by the Board pursuant to the provisions of PRC 2774; and

(4) Whether the proposed reclamation plan is technically feasible given the scope of the mining operations.

(b) The determination of whether substantial compliance with PRC Sections 2772 and 2773, 14 CCR Sections 3500 et seq. and Sections 3700 et seq., and the Board-certified lead agency surface mining and reclamation ordinance have been met shall be based on whether all elements of these provisions that are necessary to ensure viable, planned reclamation of a particular site are included and are technically feasible so as to satisfy the objectives of the Surface Mining and Reclamation Act. For example, a description of revegetation efforts might not be necessary for a pit to be used as a landfill, just as a description of final slope angles may not be necessary for a gravel bar skimming operation. In other sites, however, such information may be critical. In all cases, a site visit by the technical staff of the Department of Conservation shall be made before substantial compliance is determined.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 2774, Public Resources Code.

HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*
2. *Change without regulatory effect amending subsections (a), (a)(2) and (b) filed 5-1-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 18).*
3. *Amendment of subsections (a), (a)(2) and (b) filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3654. Hearing Procedures - Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. The hearing may be scheduled as part of a regular business meeting of the Board or may be conducted by a committee of the Board. The Board shall endeavor to schedule such public hearings in the jurisdiction from which the appeal originated, but may otherwise schedule such appeals to be heard in Sacramento.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.

HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*

§ 3655. Hearing Procedures - Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least two members of the Board to be appointed for that hearing by the Chairman of the Board. The Chairman of the Board or the Chairman's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the Board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3659 of these regulations.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.

HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, NO. 2).*
2. *Amendment filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3656. Hearing Procedures - Notice.

(a) At least 10 days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing the notice to the lead agency and to the appellant;

(2) Mailing the notice to any person who requests notice of the appeal or hearing;

(3) Mailing the notice to the Board's regular mailing list; and

(4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

(1) The name of the appellant;

(2) Identification of the proposed reclamation plan, a brief description of the location of the surface mining operation for which the reclamation plan was prepared by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement that the appellant has appealed the lead agency's decision to deny approval of the reclamation plan, or that the lead agency is being challenged based on failure to act according to due process, or that the lead agency is being challenged based on failure to act within a reasonable period of time;

(4) A statement explaining that the Board may approve or deny approval of the reclamation plan, and that if the reclamation plan is denied approval, it shall be returned to the operator who then must revise it and resubmit the revised plan to the lead agency within 30 days of receipt from the Board;

(5) A statement inviting the appellant, the lead agency, and the public to make statements at the hearing regarding the action (or inaction) of the lead agency; and

(6) The time, date, and location of the public hearing.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.

HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*
2. *Amendment of subsection (a) filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3657. Hearing Procedures - Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3650 and 3652 of this article, together with any findings from the technical review pursuant to Section 3653 of this article, and any CEQA documents prepared pursuant to Section 3652 of this article.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e) and 2774, Public Resources Code.

HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*

§ 3658. Hearing Procedures - Sequence.

(a) The public hearing shall normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the appellant;

(3) Statements on behalf of the lead agency;

(4) Statements on behalf of the public;

(5) Rebuttal on behalf of the appellant; and

(6) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee (Board Member) for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee (Board Member) shall have the authority to impose time limits

upon statements and presentations and accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the Board at least five days prior to the hearing.

(d) The public hearing shall be recorded.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), Public Resources Code.

HISTORY

1. *New section file 1-3-89; operative 2-2-89 (Register 89, No. 2).*
2. *Amendment of subsection (c) filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3659. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, based on the record before it, the proposed reclamation plan substantially meets the requirements of PRC 2772 and 2773 and the lead agency surface mining and reclamation ordinance, and the provisions of Section 3654 of this article. Notification of the Board's determination shall be made by certified mail to the appellant and the lead agency within 15 days following the regular business meeting of the Board at which the decision is made. In cases where the reclamation plan is not approved, deficiencies shall be noted in the correspondence notifying the appellant and the lead agency of the Board's decision, and the operator shall be put on notice that deficiencies must be corrected and a revised reclamation plan filed with the lead agency within 30 days.

NOTE

Authority cited: Section 2770, Public Resources Code. Reference: Sections 2770(c)-(e), 2772, 2773 and 2774, Public Resources Code.

HISTORY

1. *New section filed 1-3-89; operative 2-2-89 (Register 89, No. 2).*

Article 6. Mineral Resource Management Policies

§ 3675. Definitions. The following definitions as used herein shall govern the interpretation of these regulations:

Compatible Land Use. Land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing, and open space.

Incompatible Land Use. Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2761-2762, Public Resources Code.

HISTORY

1. *New section filed 10-12-88; operative 11-11-88 (Register 88, No. 42).*

§ 3676. Mineral Resource Management Policies.

Lead agency mineral resource management policies adopted pursuant to the provisions of PRC Section 2762 shall include but not be limited to, the following:

(a) A summary of the information provided by the classification and/or designation reports, or incorporation of PRC Sections 2710 et seq., and state policy by reference, together with maps of the identified mineral deposits or incorporation by reference of the classification and/or designation maps provided by the Board.

(b) Statements of policy in accordance with the provisions of PRC Section 2762(a).

(c) Implementation measures that shall include:

(1) Reference in the general plan of the location of identified mineral deposits, and a discussion of those areas targeted for conservation and possible future extraction by the lead agency.

(2) Use of overlay maps or inclusion of information on any appropriate planning maps to clearly delineate identified mineral deposits and those areas targeted by

the lead agency for conservation and possible future extraction.

(3) At least one of the following:

(A) Use of special purpose overlay zones, mineral resource/open space zoning, or any other appropriate zoning that identifies the presence of identified mineral deposits and restricts the encroachment of incompatible land uses in those areas that are to be conserved.

(B) Record, on property titles in the affected mineral resource areas, a notice identifying the presence of identified mineral deposits.

(C) Impose conditions upon incompatible land uses in and surrounding areas containing identified mineral deposits for the purpose of mitigating the significant land use conflicts prior to approving a use that would otherwise be incompatible with mineral extraction.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2757 and 2761-63, Public Resources Code.

HISTORY

1. *New section filed 10-12-88; operative 11-11-88 (Register 88, No. 42).*

Article 7. Financial Assurances Appeal Procedures

§ 3680. Purpose of Regulations.

The regulations contained in this article govern procedures for appeals to the State Mining and Geology Board ("the Board") concerning financial assurances for reclamation of existing surface mining operations under section 2770 of the Public Resources Code.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 9).*

§ 3681. Filing of Intent to Appeal.

Any person filing an appeal to the Board pursuant to section 2770 of the Public Resources Code concerning financial assurances for reclamation shall, within 15 days of exhausting his or her right to appeal in accordance with the procedures of the lead agency, file a notice of intent to appeal by submitting the following information:

(1) A map indicating the exact location of the surface mining operation, including township and range.

(2) A copy of all documents which together comprise the financial assurances for reclamation which are the subject of the appeal.

(3) Written statements, with supporting documentation, indicating the basis for the appellant's challenge of the action or inaction by the lead agency concerning financial assurances for reclamation.

(4) Copy of the notice to the lead agency that the appellant intends to file an appeal with the Board.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 9).*

§ 3682. Determination of Jurisdiction.

The Chairman of the Board, or the Chairman's designee (Board Member), shall determine whether the appeal is within the jurisdiction of the Board for purposes of hearing the appeal, and determine whether the appellant's challenge raises any substantial issues related to the review by the lead agency of financial assurances for reclamation for existing surface mining operations pursuant to Public Resources Code section 2770. If the Chairman finds, based on the criteria stated in (a) through (c) below, that the appeal raises no substantial issues with respect to the review by the lead agency of financial assurances for existing surface mining operations under Public Resources Code section 2770, he or she shall refuse to grant a hearing on the appeal. In making this determination, the Chairman shall consider the following:

(a) Whether the appeal raises any issues which legally can be addressed by the Board within the limits of Public Resources Code section 2770 and the rules of the Board;

(b) Whether the appeal specifically relates to the lead agency's review of financial assurances submitted for existing surface mining operations pursuant to the provisions of Public Resources Code section 2770; and

(c) Whether the appellant exhausted his or her appeal remedies before the lead agency.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 9).*

§ 3683. Limit on Number of Filings of Appeal.

Upon a finding by the Chairman, or the Chairman's designee (Board Member), that the appeal is not within the jurisdiction of the Board, the appellant may refile the notice of intent to appeal, once only, with the identified information needed to complete the appeal, within 21 days of receipt of the letter of denial of the original notice of intent to appeal.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3684. Administrative Record.

(a) Once the appellant has been notified that a determination has been made that an appeal is within the jurisdiction of the Board for purposes of hearing the appeal, the appellant shall submit three certified copies of the complete administrative record, which shall include, but shall not be limited to, all of the following information:

(1) A copy of the approved reclamation plan for the mining operation and any permit conditions or California Environmental Quality Act mitigations which pertain to reclamation for which the financial assurances for reclamation are proposed;

(2) A copy of the documents comprising the financial assurances or the proposed financial assurances for reclamation which were submitted to the lead agency for review and approval pursuant to Public Resources Code section 2770;

(3) Location and site description maps submitted to the lead agency as part of the reclamation plan;

(4) A detailed estimate of the cost of the reclamation, in accordance with the approved reclamation plan, of the lands remaining disturbed and/or to be disturbed by the surface mining operation in the applicable twelve (12) month period, together with a map clearly delineating the boundaries of those lands;

(5) All reports, findings, communications, correspondence and statements in the file of the lead agency relating to the financial assurances in question;

(6) Written transcripts of all public hearings related to the lead agency's review of the financial assurances.

(b) Failure of the appellant to request the administrative record from the lead agency within 21 days of receiving the notice stating the Board's acceptance of the appeal, may be deemed grounds for dismissal of the appeal.

(c) If the appellant is unable to obtain the administrative record from the lead agency within 10 working days after submission of the request for the record, the appellant shall so notify the Board in writing. The Board may then require the lead agency to immediately submit three certified copies of the administrative record to the Board for purposes of hearing the appeal without undue delay.

(d) Failure of the lead agency to produce the administrative record upon request of the Board within 30 days may be deemed grounds for Board action based on information provided solely by the appellant.

(e) Following production of the administrative record by the lead agency, failure of the appellant to produce the administrative record upon the request of the Board within 21 days may be deemed grounds for dismissal of the appeal.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3685. Hearing Procedures - Scheduling.

The Board shall schedule and hold a public hearing on an appeal no later than 45 days from the filing of the complete administrative record, or at such time as may be mutually agreed upon by the Board and the appellant. The hearing may be scheduled as part of a regular

business meeting of the Board or may be conducted by a committee of the Board.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3686. Hearing Procedures - Authority for Delegation.

The Board may delegate conduct of the hearing to a committee of at least two Board members to be appointed for that hearing by the Chairman of the Board. The Chairman of the Board or the Chairman's designee (Board Member) shall conduct the hearing; the recommendations of the committee shall be presented to a quorum of the board at a regular business meeting for a decision of the full Board consistent with the procedures set forth in section 3690 of these regulations.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3687. Hearing Procedures - Notice.

(a) At least 10 working days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing the notice to the lead agency and to the appellant;

(2) Mailing the notice to any person who requests notice of the appeal or hearing;

(3) Mailing the notice to the Board's regular mailing list; and

(4) Posting of the notice in a place where notices are customarily placed within the jurisdiction of the lead agency.

(b) The notice of hearing shall include the following:

(1) The name of the appellant;

(2) Description of the financial assurances for reclamation, identification of the surface mining operation for which the financial assurances for reclamation were provided, a brief description of the location of the surface mining operation by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement of the grounds for the appeal;

(4) A statement that the Board may approve or deny approval of the financial assurances for reclamation;

(5) A statement that if the Board denies approval of the financial assurances, they shall be returned to the mine operator who shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the Board, to correct the noted deficiencies and submit the revised financial assurances to the lead agency for review and approval;

(6) A statement inviting the appellant, the lead agency, and the public to provide testimony and evidence at the hearing regarding the action or inaction of the lead agency; and

(7) The time, date, and location of the public hearing.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3688. Hearing Procedures - Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to sections 3681 and 3684 of this article.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3689. Hearing Procedures - Sequence.

(a) The public hearing shall normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the appellant;

(3) Statements on behalf of the lead agency;

(4) Statements on behalf of the public;
(5) Rebuttal on behalf of the appellant; and
(6) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman or the Chairman's designee (Board Member) for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee (Board Member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Written statements shall be submitted to the Board at least ten days prior to the hearing.

(d) The public hearing shall be recorded.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Section 2770, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

§ 3690. Hearing Procedures - Determination.

Following the public hearing, the Board shall determine whether, based on the record before it, the proposed or existing financial assurances for reclamation substantially meet the applicable requirements of Public Resources Code sections 2770, 2773.1, and the lead agency surface mining ordinance adopted pursuant to subdivision (a) of section 2774. Financial assurances determined to meet these requirements shall be approved. Notification of the Board's determination shall be made by certified mail to the appellant and the lead agency within 15 days following the regular business meeting of the Board at which the decision was made. In cases where the financial assurances for reclamation are not approved, deficiencies shall be noted in the correspondence notifying the appellant and the lead agency of the Board's decision. The appellant shall be granted, once only, a period of 30 days, or a longer period mutually agreed upon by the operator and the Board, to correct the noted deficiencies and submit the revised financial assurances for reclamation to the lead agency for review and approval.

NOTE

Authority cited: Sections 2755 and 2770, Public Resources Code. Reference: Sections 2770 and 2774, Public Resources Code.

HISTORY

1. *New section filed 12-12-91; operative 12-12-91 pursuant to Government Code section 11346.2 (d) (Register 92, No. 9).*

Article 8. Fee Schedule

§ 3695. Definitions.

The following definitions shall govern the interpretation of these regulations:

"Produced Minerals" means minerals extracted at the site of the mining operation, and either:

(a) sold, given or otherwise moved off the site of the operation, as defined in the approved reclamation plan, or;

(b) used onsite for production of completed products (e.g. cement, bricks, asphaltic concrete, etc.).

Stockpiles of mineral products that remain on the site, as defined in the lead agency approved reclamation plan, are not produced minerals for purposes of these regulations.

"Primary Mineral Commodity Produced" means the produced mineral that provides the highest dollar values sales for the operation.

"Board" means State Mining and Geology Board.

As used in Section 3697 and 3699 "Mining Company" means any entity, corporation, partnership, parent or holding company. Any subsidiaries of the above are deemed to be part of the mining company.

As used in Section 3699, "Gross Income" means all income from whatever source derived as defined by, and determined in accordance with, Section 61 of the Internal Revenue Code, Title 26, U.S.C.S.

"Aggregate Products" means decomposed granite, sand and gravel, slag, or stone.

"Industrial Minerals" means borates, cinders, clay, diatomite, dolomite, gypsum, iron ore, lime, limestone, perlite, pumice, rare earth elements, saline compounds, salt, shale, silica, specialty sand, abrasives, asbestos, barite, bituminous rock, decorative rock, dimension stone, feldspar, fluorite, gemstones, graphite, kyanite, lignite, lithium, magnesite, mica, olivine, peat, phosphate, potash, pyrophyllite, quartz crystal, sea shells, sercite, talc, vermiculite, wollastonite, zeolites, and zircon.

"Gold, Silver, and Precious Metals" means gold (lode), gold (placer), platinum group metals, and silver.

"Base Metals and Other Metals" means antimony, arsenic, chromite, copper, lead, manganese, mercury, molybdenum, nickel, pyrite, tin, titanium, tungsten, uranium, vanadium, and zinc.

NOTE

Authority cited: Sections 2207(d)(1)-(2), Public Resources Code. Reference: Sections 2207 (d)(1)-(2) and 2207(f), Public Resources Code.

HISTORY

1. *Renumbering of former section 3695 to section 3696, and new section filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).*
3. *Amendment adding Gross income filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day. Certificate of Compliance as to 4-30-93 order transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).*
4. *New definitions "Board" and "Mining Company" and amendment of Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.*
5. *New definitions "Board" and "Mining Company" and amendment of Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.*
6. *Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).*
7. *Amendment filed 4-20-95 as an emergency; operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.*

§ 3696. Operations Subject to Fees.

(a) Each surface mining operation, as defined in Public Resources Code Sections 2719, 2727.1, 2735, and California Code of Regulations, Title 14, Section 3501, unless exempted by Public Resources Code Section 2714, shall be assessed an annual reporting fee according to the schedule established pursuant to in Section 3698 each May 1 following the reporting calendar year.

(b) In addition to the annual reporting fee, each surface mining operation that is newly permitted shall be assessed an initial reporting fee according to the schedule in Section 3698 of this article.

NOTE

Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

HISTORY

1. *New section filed 4-17-91 as an emergency; operative 5-1-91 (Register 91, No. 19). A Certificate of Compliance must be transmitted to OAL by 8-29-91 or emergency language will be revealed by operation of law on the following day.*
2. *Repealed by operation of law and new section filed 1-9-92; operative 1-9-92 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).*
3. *Renumbering of former section 3695 to section 3696 filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.*
4. *Certificate of Compliance as to 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).*
5. *Amendment of section and Note filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day.*
6. *Certificate of Compliance as to 4-30-93 order transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).*
7. *Amendment of section and Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to*

OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.

8. *Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).*
9. *Amendment filed 4-20-95 as an emergency; operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.*
10. *Certificate of Compliance as to 5-1-95 order transmitted to OAL 8-2-95 and filed 9-8-95 (Register 95, No. 36).*
11. *Amendment filed 4-9-96 as an emergency; operative 5-1-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.*
12. *Certificate of Compliance as to 4-9-96 order transmitted to OAL 7-26-96 and filed 8-21-96 (Register 96, No. 34).*
13. *Amendment of subsection (b) and Note filed 4-21-97 as an emergency; operative 5-1-97 pursuant to Government Code section 11343.4(c). A Certificate of Compliance must be transmitted to OAL by 8-29-97 or emergency language will be repealed by operation of law on the following day.*
14. *Certificate of Compliance as to 4-21-97 order, including further amendments, transmitted to OAL 5-30-97 and filed 7-11-97 (Register 97, No. 28).*

§ 3696.5. Board Administration Fee.

Each surface mining operation, as defined in Public Resources Code sections 2719, 2727.1, and 2735, and, Title 14 California Code of Regulations, Section 3501, unless exempted by Public Resources Code Section 2714, shall be assessed each January 31 an annual administration fee of $14 (seven dollars) per day for each day of the previous calendar year that the surface mine operation was under the board's jurisdiction as lead agency pursuant to Chapter 9, commencing with Section 2710. The administration fee is due and payable to the State Mining and Geology Board not later than April 1 each year by the surface mine's owner or operator of record on the preceding December 31.

NOTE

Authority cited: Sections 2207 and 2755, Public Resources Code. Reference: Section 2207, Public Resources Code.

HISTORY

1. *New section filed 11-8-2004; operative 12-8-2004 (Register 2004, No. 46).*

§ 3697. Fees Due and Delinquent.

(a) The annual reporting fee and Mining Operation Annual Report (MRRC-2) are due and payable to the Department of Conservation not later than July 1 for the prior reporting year, by the owner or operator of record on the preceding December 31. The initial reporting fee for a new surface mining operation, together with an initial report, are due and payable to the Department of Conservation not later than thirty (30) days after permit approval. An owner or operator of a surface mining operation submitting an annual reporting fee or annual report after July 1, or more than thirty (30) days after permit approval, shall be assessed a penalty fee and interest as provided in Public Resources Code Section 2207 (c) and (d)(5).

(b) Except as otherwise provided in (c), for the purposes of this article, surface mining operations are deemed to be discrete operations per each reclamation plan required.

(c) Multiple site surface mining operations are deemed to be those active surface mining operations which meet all of the following criteria:

(1) One or more surface mining operations are operated on one or more sites by a single operator or mining company;

(2) The total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity product is not precious metals;

(3) All of the sites included are active;

(4) All of the operator or company's entire active surface mining operations located in the State of California are tied to, or located on, the listed sites; and

(d) In addition to the criteria provided in (c), multiple site mining operator's submittal of the annual report form (Mining Operation Annual Report, Form MRRC-2) shall be accompanied by a multiple site form (Multiple Site

Single Fee Request, Form MRRC-4M) supplied by the Department of Conservation.

NOTE

Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

HISTORY

1. *New section filed 4-17-91 as an emergency; operative 5-1-91 (Register 91, No. 19). A Certificate of Compliance must be transmitted to OAL by 8-29-91 or emergency language will be revealed by operation of law on the following day.*
2. *Repealed by operation of law and new section filed 1-9-92; operative 1-9-92 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).*
3. *Renumbering of former section 3695 to section 3696 filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.*
4. *Certificate of Compliance as to 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).*
5. *Amendment of section and Note filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day.*
6. *Certificate of Compliance as to 4-30-93 order transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).*
7. *Amendment of section and Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.*
8. *Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).*
9. *Amendment filed 4-20-95 as an emergency; operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.*
10. *Certificate of Compliance as to 5-1-95 order transmitted to OAL 8-2-95 and filed 9-8-95 (Register 95, No. 36).*
11. *Amendment filed 4-9-96 as an emergency; operative 5-1-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.*
12. *Certificate of Compliance as to 4-9-96 order transmitted to OAL 7-26-96 and filed 8-21-96 (Register 96, No. 34).*
13. *Amendment of subsection (b) and Note filed 4-21-97 as an emergency; operative 5-1-97 pursuant to Government Code section 11343.4(c). A Certificate of Compliance must be transmitted to OAL by 8-29-97 or emergency language will be repealed by operation of law on the following day.*
14. *Certificate of Compliance as to 4-21-97 order, including further amendments, transmitted to OAL 5-30-97 and filed 7-11-97 (Register 97, No. 28).*

§ 3698. Fees Calculation.

Annual reporting fees cited in sections 3698 and 3699 shall be adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(a) The annual reporting fee for a multiple site surface mining operation shall be four thousand dollars ($4,000).

(b) The annual reporting fee for surface mining operations which are no longer in operation with no intent to resume, which had no mineral production in the reporting calendar year, and

(1) Which did not complete reclamation during the reporting calendar year shall be $100; or

(2) Which completed reclamation during the reporting calendar year shall be $100. Proof of completion of reclamation, approved by the lead agency, shall be submitted with this fee.

(c) Except as otherwise provided, the annual reporting fee for surface mining operations shall be calculated on the total primary mineral commodity produced in the reporting calendar year. A factor to determine the amount of fee adjustments from one reporting calendar year to the next shall be calculated according to the following formula:

[((ATRY) - (ATPY))/(ATPY)] = Factor

Where: Adjusted Total (AT) equals the Amount Requested by the Director, less a projected amount from fees set in CCR §3698 (a)(b)(d)(e) and CCR §3699, and less a projected amount from mine operations subject to the maximum fee amount of $4,000; Where: ATRY is the Adjusted Total for the current "Reporting Year" Where: ATPY is the Adjusted Total for the "Prior Year"

The new Fee Amount for each category is determined by the following formula (calculated amounts cannot be less than $100 or more than $4,000, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter, and may be rounded to the nearest $1 (one dollar):

Formula 1: Current Year Reporting Fee = Prior Year Reporting Fee times (1 + Factor) if Factor is positive; Formula 2: Current Year Reporting Fee = Prior Year Reporting Fee times (1 - Factor) if Factor is negative.

(1) Operations where the primary mineral commodity produced is either aggregate products or industrial minerals shall be assessed a fee as follows:

Tons	Fee in Dollars
0 - 100	Formula 1 or 2 (not less than $100)
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 50,000	Formula 1 or 2
>50,000 - 100,000	Formula 1 or 2
>100,000	4,000

(2) Operations where the primary mineral commodity produced is gold, silver, or precious metals shall be assessed a fee as follows:

Ounces	Fee in Dollars
0 - 1	Formula 1 or 2 (not less than $100)
>1 - 10	Formula 1 or 2
>10 – 50	Formula 1 or 2
>50 - 150	Formula 1 or 2
>150 - 300	Formula 1 or 2
>300	4,000

(3) Operations where the primary mineral commodity produced is base metals or other metals shall be assessed a fee as follows:

Pounds	Fee in Dollars
0 - 10	Formula 1 or 2 (not less than $100)
>10 - 100	Formula 1 or 2
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 20,000	Formula 1 or 2
>20,000	4,000

(d) The initial reporting fee for surface mining operations shall be five hundred dollars ($500).

(e) The annual reporting fee for newly permitted surface mining operations which have not yet begun operations shall be one hundred dollars ($100).

(f) In addition to the annual reporting fees, the board shall collect five dollars ($5) per ounce of gold and ten cents ($0.10) per ounce of silver based on the amount of product mined within the state during the reporting year.

NOTE

Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

HISTORY

1. *New section filed 4-17-91 as an emergency; operative 5-1-91 (Register 91, No. 19). A Certificate of Compliance must be transmitted to OAL by 8-29-91 or emergency language will be revealed by operation of law on the following day.*
2. *Repealed by operation of law and new section filed 1-9-92; operative 1-9-92 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).*
3. *Renumbering of former section 3695 to section 3696 filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.*
4. *Certificate of Compliance as to 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).*
5. *Amendment of section and Note filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day.*

6. *Certificate of Compliance as to 4-30-93 order transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).*
7. *Amendment of section and Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.*
8. *Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).*
9. *Amendment filed 4-20-95 as an emergency; operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.*
10. *Certificate of Compliance as to 5-1-95 order transmitted to OAL 8-2-95 and filed 9-8-95 (Register 95, No. 36).*
11. *Amendment filed 4-9-96 as an emergency; operative 5-1-96 (Register 96, No. 15). A Certificate of Compliance must be transmitted to OAL by 8-8-96 or emergency language will be repealed by operation of law on the following day.*
12. *Certificate of Compliance as to 4-9-96 order transmitted to OAL 7-26-96 and filed 8-21-96 (Register 96, No. 34).*
13. *Amendment of subsection (b) and Note filed 4-21-97 as an emergency; operative 5-1-97 pursuant to Government Code section 11343.4(c). A Certificate of Compliance must be transmitted to OAL by 8-29-97 or emergency language will be repealed by operation of law on the following day.*
14. *Certificate of Compliance as to 4-21-97 order, including further amendments, transmitted to OAL 5-30-97 and filed 7-11-97 (Register 97, No. 28).*
15. *Amendment filed 3-8-2004 as an emergency; operative 3-8-2004 (Register 2004, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-6-2004 or emergency language will be repealed by operation of law on the following day.*

§ 3699. Low Gross Exemptions.

(a) For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1 following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the operation meets the following criteria:

(1) material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained; and

(2) all of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site; and

(3) the amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than $100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and

(4) the owner or operator has submitted an annual reporting fee of four hundred dollars ($400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(b) For any request received on or before July 1 following the reporting calendar year the Department may afford the applicant one 30-day period in which to correct minor deficiencies in the application.

(c) If the Department of Conservation determines that an exemption is not warranted, the operator may appeal that determination to the Board. The appeal must be submitted in writing within fifteen (15) days of the denial of exemption notification by the Department of Conservation. The Chairman of the Board or his designee (Board Member), shall determine whether the

Board has jurisdiction for the purposes of an appeal. In order for the Board to have jurisdiction the appeal must:

(1) Demonstrate the exemption request was complete and filed in a timely fashion;

(2) Specifically relate to the exemption criteria outlined in this Section; and

(3) Specify the appellant's arguments for granting the exemption.

(d) If the appeal is within the Board's jurisdiction, the Board, based on all the evidence in the record, may affirm the Department's decision or grant the exemption. If the operator does not appeal, the appeal is not within the Board's jurisdiction, or the Board affirms the Department's decision, the operator or owner shall submit an annual reporting fee calculated upon the total mineral commodity produced pursuant to Section 3698. Such fee shall be submitted within thirty (30) days of notification by the Department of Conservation or the Board. An operator or owner submitting an annual reporting fee later than thirty (30) days after notification shall be assessed a penalty and interest as provided in Public Resources Code Section 2207(d)(5).

NOTE

Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

HISTORY

1. *New section filed 1-9-92; operative 1-9-92 pursuant to Government Code section 11346.2(d) (Register 92, No. 12).*
2. *Amendment filed 4-22-92 as an emergency; operative 5-1-92 (Register 92, No. 19). A Certificate of Compliance must be transmitted to OAL 9-18-92 or emergency language will be repealed by operation of law on the following day.*
3. *Certificate of Compliance as to 4-22-92 order transmitted to OAL 8-28-92 and filed 10-13-92 (Register 92, No. 42).*
4. *Amendment filed 4-30-93 as an emergency; operative 4-30-93 (Register 93, No. 18). A Certificate of Compliance must be transmitted to OAL 8-30-93 or emergency language will be repealed by operation of law on the following day.*
5. *Certificate of Compliance as to 4-30-93 order, including amendment of subsections (a)(1)-(2) and (b)(3) transmitted to OAL 8-10-93 and filed 9-22-93 (Register 93, No. 39).*
6. *Amendment of section and Note filed 4-28-94 as an emergency; operative 5-1-94 (Register 94, No. 17). A Certificate of Compliance must be transmitted to OAL by 8-29-94 or emergency language will be repealed by operation of law on the following day.*
7. *Certificate of Compliance as to 4-29-94 order transmitted to OAL 8-26-94 and filed 10-6-94 (Register 94, No. 40).*
8. *Amendment of section, Note, and Forms MRRC-4L and MRRC-4M filed 4-20-95 as an emergency; operative 5-1-95 (Register 95, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-29-95 or emergency language will be repealed by operation of law on the following day.*
9. *Certificate of Compliance as to 5-1-95 order including amendment of subsection (b) and new Form MRRC-2 transmitted to OAL 8-2-95 and filed 9-8-95 (Register 95, No. 36).*
10. *Amendment of subsections (a), (a)(3) and (b), and repealer and new Forms MRRC-2, MRRC-4L and MRRC-4M filed 4-9-96 as an emergency language will be repealed by operation of law on the following day.*
11. *Certificate of Compliance as to 4-9-96 order transmitted to OAL 7-26-96 and filed 8-21-96 (Register 96, No. 34).*
12. *Amendment of subsections (a), (a)(3), (b) and (d), amendment of and Note, and amendment of forms MRRC-2, MRRC-4L and MRRC-4M filed 4-21-97 as an emergency; operative 5-1-97 pursuant to Government Code section 11343.4(c). A Certificate of Compliance must be transmitted to OAL by 8-29-97 or emergency language will be repealed by operation of law on the following day.*
13. *Certificate of Compliance as to 4-21-97 order, including further amendment of subsections (a) and (b) and forms MRRC-2, MRRC-4L and MRRC-4M, transmitted to OAL 5-30-97 and filed 7-11-97 (Register 97, No. 28).*

14. *Editorial correction amending subsection (a) and inserting inadvertently omitted subsection (c) (Register 2004, No. 11).*
15. *Amendment of subsections (a) and (a)(4) filed 3-8-2004 as an emergency; operative 3-8-2004 (Register 2004, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-6-2004 or emergency language will be repealed by operation of law on the following day.*

Article 9. Reclamation Standards

§ 3700. Applicability. Reclamation of mined lands shall be implemented in conformance with the standards in this Article.

(a) The standards shall apply to each surface mining operation to the extent that:

(1) they are consistent with required mitigation identified in conformance with the California Environmental Quality Act, provided that such mitigation is at least as stringent as the standards; and

(2) they are consistent with the planned or actual subsequent use or uses of the mining site.

(b) Where an applicant demonstrates to the satisfaction of the lead agency that an exception to the standards specified in this article is necessary based upon the approved end use, the lead agency may approve a different standard for inclusion in the approved reclamation plan. Where the lead agency allows such an exception, the approved reclamation plan shall specify verifiable, site-specific standards for reclamation. The lead agency may set standards which are more stringent than the standards set forth in this Article; however, in no case may the lead agency approve a reclamation plan which sets any standard which is less stringent than the comparable standard specified in this Article.

(c) When substantial amendments are proposed to reclamation plans which were approved prior to January 15, 1993, the standards set forth in this Article shall be applied by the lead agency in approving or denying approval of the amended reclamation plan.

(d) The standards in this Article shall not apply to mining operations:

(1) which completed reclamation prior to January 15, 1993, in conformance with an approved reclamation plan; or

(2) for which a reclamation plan has been approved prior to January 15, 1993.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New article 9 (sections 3700-3713) filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3701. Definitions. The following definitions shall govern the interpretation of these regulations:

"Arid" means landscapes with an average annual precipitation of five inches or less.

"Contamination" means an impairment of the quality of the waters of the state to a degree which creates a hazard to the public health through poisoning or through the spread of disease.

"Highwall" means the unexcavated face of exposed overburden and ore in a surface mine.

"Indigenous Plants" means plants occurring naturally in an area, not introduced.

"Native Species" means plant species indigenous to California, using pre-European as the historic time reference.

"Noxious Weeds" means any species of plant that is or is likely to become destructive or difficult to control or eradicate, and is termed to be so by the Director of the Department of Food and Agriculture in section 4500, Title 3 of the California Code of Regulations, pursuant to the Food and Agriculture Code section 5004 et seq.

"Vegetative Cover" means the vertical projection of the crown or shoot area of a species to the ground surface expressed as a percentage of the reference area (percentage can be greater than 100 percent).

"Vegetative Density" means the number of individuals or stems of each species rooted within the given reference area.

"Vegetative Species-richness" means the number of different plant species within the given reference area.

"Wetlands" for the purposes of these regulations, the definition of wetlands shall be the same as defined in the California Fish and Game Code, section 2785, subdivision (g).

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3702. Financial Assurances. Lead agencies shall require financial assurances for reclamation in accordance with Public Resources Code section 2773.1 to ensure that reclamation is performed in accordance with the approved reclamation plan and with this article.

NOTE

Authority cited: Sections 2755, 2773 and 2773.1, Public Resources Code. Reference: Sections 2773 and 2773.1, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3703. Performance Standards for Wildlife Habitat.

Wildlife and wildlife habitat shall be protected in accordance with the following standards:

(a) Rare, threatened or endangered species as listed by the California Department of Fish and Game, (California Code of Regulations, Title 14, sections 670.2 - 670.5) or the U. S. Fish and Wildlife Service, (50 CFR 17.11 and 17.12) or species of special concern as listed by the California Department of Fish and Game in the Special Animals List, Natural Diversity Data Base, and their respective habitat, shall be conserved as prescribed by the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et. seq., and the California Endangered Species Act, Fish and Game Code section 2050 et seq. If avoidance cannot be achieved through the available alternatives, mitigation shall be proposed in accordance with the provisions of the California Endangered Species Act, Fish and Game Code section 2050 et seq., and the federal Endangered Species Act of 1973, 16 U.S.C. section 1531 et seq.

(b) Wildlife habitat shall be established on disturbed land in a condition at least as good as that which existed before the lands were disturbed by surface mining operations, unless the proposed end use precludes its use as wildlife habitat or the approved reclamation plan establishes a different habitat type than that which existed prior to mining.

(c) Wetland habitat shall be avoided. Any wetland habitat impacted as a consequence of surface mining operations shall be mitigated at a minimum of one to one ratio for wetland habitat acreage and wetland habitat value.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3704. Performance Standards for Backfilling, Regrading, Slope Stability, and Recontouring.

Backfilling, regrading, slope stabilization, and recontouring shall conform with the following standards:

(a) Where backfilling is proposed for urban uses (e.g., roads, building sites, or other improvements sensitive to settlement), the fill material shall be compacted in accordance with the Uniform Building Code, published by the International Conference of Building Officials and as adopted by the lead agency, the local grading ordinance, or other methods approved by the lead agency as appropriate for the approved end use.

(b) Where backfilling is required for resource conservation purposes (e.g., agriculture, fish and wildlife habitat, and wildland conservation), fill material shall be backfilled to the standards required for the resource conservation use involved.

(c) Piles or dumps of mining waste shall be stockpiled in such a manner as to facilitate phased reclamation. They shall be segregated from topsoil and topsoil substitutes or growth media salvaged for use in reclamation.

(d) Final reclaimed fill slopes, including permanent piles or dumps of mine waste rock and overburden, shall not exceed 2:1 (horizontal:vertical), except when site-specific geologic and engineering analysis demonstrate that the proposed final slope will have a minimum slope stability factor of safety that is suitable for the proposed end use, and when the proposed final slope can be successfully revegetated.

(e) At closure, all fill slopes, including permanent piles or dumps of mine waste and overburden, shall conform with the surrounding topography and/or approved end use.

(f) Cut slopes, including final highwalls and quarry faces, shall have a minimum slope stability factor of safety that is suitable for the proposed end use and conform with the surrounding topography and/or approved end use.

(g) Permanent placement of piles or dumps of mining waste and overburden shall not occur within wetlands unless mitigation acceptable to the regulatory agencies with jurisdiction over wetlands, which may include the lead agency, has been proposed to offset wetland impacts and/or losses.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*
2. *Amendment of subsections (a) and (g) filed 10-31-2000; operative 11-30-2000 (Register 2000, No. 44).*

§ 3704.1 Performance Standards for Backfilling Excavations and Recontouring Lands Disturbed by Open Pit Surface Mining Operations for Metallic Minerals

Notwithstanding the provisions of Section 3700(b) of the Article, no reclamation plan, including any reclamation plan in which the end use is for wildlife habitat, wildland conservation, or open space, or financial assurance for a surface mining operation subject to the provisions of this section, shall be approved by a lead agency unless the reclamation plan meets the provisions of this section. Financial assurances must be maintained in an amount sufficient to provide for the backfilling and contour grading of the mined lands as required in this section.

(a) An open pit excavation created by surface mining activities for the production of metallic minerals shall be backfilled to achieve not less than the original surface elevation, unless the circumstances under subsection (h) are determine by the lead agency to exist.

(b) Backfilling shall be engineered, and backfilled materials shall be treated, if necessary, to meet all of the provisions of Title 27, California Code of Regulations, Division 2, Chapter 7, Subchapter 1, Mining Waste Management, commencing with Section 22470, and the applicable Regional Water Quality Control Board's Water Quality Control Plan.

(c) Excavated materials remaining in overburden piles, waste rock piles, and processed or leached ore piles not used in the backfilling process and remaining on the mine site shall be graded and contoured to create a final surface that is consistent with the original topography of the area. Care shall be taken to avoid the creation of un-natural topographic features, impediments to natural drainage, or conditions hazardous to human life and wildlife.

(d) Backfilling, recontouring, and revegetation activities shall be performed in clearly defined phases to the engineering and geologic standards required for the end use of the site as stipulated in the approved reclamation plan. All fills and fill slopes shall be designed to protect groundwater quality, to prevent surface water ponding, to facilitate revegetation, to convey runoff in a non-erosive manner, and to account for long term settlement.

(e) The requirements of subsections (a), (b), (c), and (d) notwithstanding, no final reclaimed fill slopes shall exceed 2:1 (horizontal:vertical), nor shall the resultant topography exceed in height the pre-mining surface contour elevations by more than 25 feet. Final fill slopes shall have static and dynamic factor of safety, as determined by an engineer licensed in California, that are suitable for the proposed end use of the site and meet or exceed the requirements of applicable building or grading codes, ordinances, statutes, and regulations. Final slopes must be capable of being revegetated, and shall blend in visually with the local topography. Surface soil shall be salvaged, stored, and reapplied to facilitate revegetation of recontoured material in accordance with the requirements of Section 3711 of this Article.

(f) For the purposes of this section, a metallic mine is defined as one where more than ten percent of the mining operation's gross annual revenues as averaged over the last five years are derived from the production of, or any combination of, the following metallic minerals by the open pit extraction method:

Precious metals (gold, silver, platinum);
Iron;
Nickel;
Copper;
Lead;
Tin;
Ferro-alloy metals (tungsten, chromium, manganese);
Mercury;

Uranium and thorium; Minor metals including rubidium, strontium, and cesium;
Niobium and tantalum;

(g) For the purposes of this regulation, an open pit mine is the same as an open pit quarry, opencast mine, or opencut mine, and is defined as a mine working or excavation that is open to the surface and in which the opening is approximately the full size of the excavation.

(h) The requirement to backfill an open pit excavation to the surface pursuant to this section using materials mined on site shall not apply if there remains on the mined lands at the conclusion of mining activities, in the form of overburden piles, waste rock piles, and processed or leached ore piles, an insufficient volume of materials to completely backfill the open pit excavation to the surface, and where, in addition, none of the mined materials has been removed from the mined lands in violation of the approved reclamation plan. In such case, the open pit excavation shall be backfilled in accordance with subsections (b) and (d) to an elevation that utilizes all of the available material remaining as overburden, waste rock, and processed or leached ore.

(i) This regulation does not apply to any surface mining operation as defined in Public Resources Code Section 2735(a) and (b) for which the lead agency has issued final approval of a reclamation plan and a financial assurance prior to December 18, 2002.

NOTE

Authority cited: Sections 2755 and 2756, Public Resources Code. Reference: Sections 2733, 2772 and 2773, Public Resources Code.

HISTORY

1. *New section filed 12-18-2002 as an emergency; operative 12-18-2002 (Register 2002, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-17-2003 or emergency language will be repealed by operation of law on the following day.*
2. *New section refiled 4-15-2003 as an emergency; operative 4-15-2003 (Register 2003, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-13-2003 or emergency language will be repealed by operation of law on the following day.*
3. *Certificate of Compliance as to 4-15-2003 order, including repealer and new section, transmitted to OAL 4-18-2003 and filed 5-30-2003 (Register 2003, No. 22.*

§ 3705. Performance Standards for Revegetation. Revegetation shall be part of the approved plan, unless it is not consistent with the approved end use.

(a) A vegetative cover suitable for the proposed end use and capable of self-regeneration without continued dependence on irrigation, soil amendments or fertilizer shall be established on disturbed land unless an artificially maintained landscape is consistent with the approved reclamation plan. Vegetative cover or density, and species-richness shall be, where appropriate, sufficient to stabilize the surface against effects of long-term erosion and shall be similar to naturally occurring habitats in the surrounding area. The vegetative density, cover and species richness of naturally occurring habitats shall be documented in baseline studies carried out prior to the initiation of mining activities. However, for areas that will not be reclaimed to prior conditions, the use of data from reference areas in lieu of baseline site data is permissible.

(b) Test plots conducted simultaneously with mining shall be required to determine the most appropriate planting procedures to be followed to ensure successful implementation of the proposed revegetation plan. The lead agency may waive the requirement to conduct test plots when the success of the proposed revegetation plan can be documented from experience with similar species and conditions or by relying on competent professional advice based on experience with the species to be planted.

(c) Where surface mining activities result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to eliminate compaction and to establish a suitable root zone in preparation for planting.

(d) Prior to closure, all access roads, haul roads, and other traffic routes to be reclaimed shall be stripped of any remaining roadbase materials, prepared in accordance with subsection 3705(g), covered with suitable growth media or topsoil, and revegetated. When it is not necessary to remove roadbase materials for revegetative purposes, lead agencies may set a different standard as specified in section 3700(b) of this Article.

(e) Soil analysis shall be required to determine the presence or absence of elements essential for plant

growth and to determine those soluble elements that may be toxic to plants, if the soil has been chemically altered or if the growth media consists of other than the native topsoil. If soil analysis suggests that fertility levels or soil constituents are inadequate to successfully implement the revegetative program, fertilizer or other soil amendments may be incorporated into the soil. When native plant materials are used, preference shall be given to slow-release fertilizers, including mineral and organic materials that mimic natural sources, and shall be added in amounts similar to those found in reference soils under natural vegetation of the type being reclaimed.

(f) Temporary access for exploration or other short-term uses on arid lands shall not disrupt the soil surface except where necessary to gain safe access. Barriers shall be installed when necessary to gain safe access. Barriers shall be installed when necessary to prevent unauthorized vehicular traffic from interfering with the reclamation of temporary access routes.

(g) Native plant species shall be used for revegetation, except when introduced species are necessary to meet the end uses specified in the approved reclamation plan. Areas to be developed for industrial, commercial, or residential use shall be revegetated for the interim period, as necessary, to control erosion. In this circumstance, non-native plant species may be used if they are not noxious weeds and if they are species known not to displace native species in the area.

(h) Planting shall be conducted during the most favorable period of the year for plant establishment.

(i) Soil stabilizing practices shall be used where necessary to control erosion and for successful plant establishment. Irrigation may be used when necessary to establish vegetation.

(j) If irrigation is used, the operator must demonstrate that the vegetation has been self-sustaining without irrigation for a minimum of two years prior to release of the financial assurances by the lead agency, unless an artificially maintained landscape is consistent with the approved end use.

(k) Noxious weeds shall be managed: (1) when they threaten the success of the proposed revegetation; (2) to prevent spreading to nearby areas; and (3) to eliminate fire hazard.

(l) Protection measures, such as fencing of revegetated areas and/or the placement of cages over individual plants, shall be used in areas where grazing, trampling, herbivory, or other causes threaten the success of the proposed revegetation. Fencing shall be maintained until revegetation efforts are successfully completed and the lead agency authorizes removal.

(m) Success of revegetation shall be judged based upon the effectiveness of the vegetation for the approved end use, and by comparing the quantified measures of vegetative cover, density, and species-richness of the reclaimed mined-lands to similar parameters of naturally occurring vegetation in the area. Either baseline data or data from nearby reference areas may be used as the standard for comparison. Quantitative standards for success and the location(s) of the reference area(s) shall be set forth in the approved reclamation plan. Comparisons shall be made until performance standards are met provided that, during the last two years, there has been no human intervention, including, for example, irrigation, fertilization, or weeding. Standards for success shall be based on expected local recovery rates. Valid sampling techniques for measuring success shall be specified in the approved reclamation plan. Sample sizes must be sufficient to produce at least an 80 percent confidence level. There are standard statistical methods in commonly available literature for determining an 80 percent confidence level on a site-by-site basis. Examples of such literature include, but are not limited to, D. Mueller-Dombois and H. Ellenberg, 1974, “Aims and Methods of Vegetation Ecology,” John Wiley and Sons, Inc., or C. D. Bonham, 1988, “Measurements for Terrestrial Vegetation,” John Wiley and Sons, Inc., and are available at many university libraries. The texts are also available at some local libraries through the Inter-Library Loan Program.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3706. Performance Standards for Drainage, Diversion Structures, Waterways, and Erosion Control.

(a) Surface mining and reclamation activities shall be conducted to protect on-site and downstream beneficial uses of water in accordance with the Porter-Cologne

Water Quality Control Act, Water Code section 13000, et seq., and the Federal Clean Water Act, 33 U.S.C. section 1251, et seq.

(b) The quality of water, recharge potential, and storage capacity of ground water aquifers which are the source of water for domestic, agricultural, or other uses dependent on the water, shall not be diminished, except as allowed in the approved reclamation plan.

(c) Erosion and sedimentation shall be controlled during all phases of construction, operation, reclamation, and closure of a surface mining operation to minimize siltation of lakes and watercourses, as required by the Regional Water Quality Control Board or the State Water Resources Control Board.

(d) Surface runoff and drainage from surface mining activities shall be controlled by berms, silt fences, sediment ponds, revegetation, hay bales, or other erosion control measures, to ensure that surrounding land and water resources are protected from erosion, gullying, sedimentation and contamination. Erosion control methods shall be designed to handle runoff from not less than the 20 year/l hour intensity storm event.

(e) Where natural drainages are covered, restricted, rerouted, or otherwise impacted by surface mining activities, mitigating alternatives shall be proposed and specifically approved in the reclamation plan to assure that runoff shall not cause increased erosion or sedimentation.

(f) When stream diversions are required, they shall be constructed in accordance with: (1) the stream and lake alteration agreement between the operator and the Department of Fish and Game; and (2) the requirements of the Federal Clean Water Act, Sections 301 (33 U.S.C. 1311) and Section 404 (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(g) When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land reclaimed.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-96 (Register 92, No. 51).*

§ 3707. Performance Standards for Prime Agricultural Land Reclamation. In addition to the standards for topsoil salvage, maintenance, and redistribution, the following standards shall apply to mining operations on prime agricultural lands where the approved end use is agriculture:

(a) Mining operations which will operate on prime agricultural lands, as defined by the U.S. Soil Conservation Service, shall return all disturbed areas to a fertility level as specified in the approved reclamation plan.

(b) When distinct soil horizons are present, topsoil shall be salvaged and segregated by defined A, B, and C soil horizons. Upon reconstruction of the soil, the sequence of horizons shall have the A atop the B, the B atop the C, and the C atop graded overburden.

(c) Reclamation shall be deemed complete when productive capability of the affected land is equivalent to or exceeds, for two consecutive crop years, that of the premining condition or similar crop production in the area. Productivity rates, based on reference areas described in the approved reclamation plan, shall be specified in the approved reclamation plan.

(d) Use of fertilizers or other soil amendments shall not cause contamination of surface or groundwater.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51*).

§ 3708. Performance Standards for Other Agricultural Land. The following standards shall apply to agricultural lands, other than prime agricultural lands, when the approved end use is agriculture.

In addition to the standards for topsoil salvage, maintenance, and redistribution, non-prime agricultural lands shall be reclaimed so as to be capable of sustaining economically viable production of crops commonly grown in the surrounding areas.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3709. Performance Standards for Building, Structure, and Equipment Removal.

(a) All equipment, supplies and other materials shall be stored in designated areas (as shown in the approved reclamation plan). All waste shall be disposed of in accordance with state and local health and safety ordinances.

(b) All buildings, structures, and equipment shall be dismantled and removed prior to final mine closure except those buildings, structures, and equipment approved in the reclamation plan as necessary for the end use.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3710. Performance Standards for Stream Protection, Including Surface and Groundwater.

(a) Surface and groundwater shall be protected from siltation and pollutants which may diminish water quality as required by the Federal Clean Water Act, sections 301 et seq. (33 U.S.C. section 1311), 404 et seq. (33 U.S.C. section 1344), the Porter-Cologne Act, section 13000 et seq., County anti-siltation ordinances, the Regional Water Quality Control Board or the State Water Resources Control Board.

(b) In-stream surface mining operations shall be conducted in compliance with Section 1600 et seq. of the California Fish and Game Code, section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(c) Extraction of sand and gravel from river channels shall be regulated to control channel degradation in order to prevent undermining of bridge supports, exposure of pipelines or other structures buried within the channel, loss of spawning habitat, lowering of ground water levels, destruction of riparian vegetation, and increased stream bank erosion (exceptions may be specified in the approved reclamation plan). Changes in channel elevations and bank erosion shall be evaluated annually using records of annual extraction quantities and benchmarked annual cross sections and/or sequential aerial photographs to determine appropriate extraction locations and rates.

(d) In accordance with requirements of the California Fish and Game Code section 1600 et seq., in-stream mining activities shall not cause fish to become entrapped in pools or in off-channel pits, nor shall they restrict spawning or migratory activities.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3711. Performance Standards for Topsoil Salvage, Maintenance, and Redistribution. When the approved reclamation plan calls for revegetation or cultivation of disturbed lands, the following performance standards shall apply to topsoil salvage, maintenance, and redistribution activities:

(a) All salvageable topsoil suitable for revegetation shall be removed as a separate layer from areas to be disturbed by mining operations. Topsoil and vegetation removal shall not precede surface mining activities by more than one year, unless a longer time period is approved by the lead agency.

(b) Topsoil resources shall be mapped prior to stripping and the location of topsoil stockpiles shall be shown on a map in the reclamation plan. If the amount of topsoil needed to cover all surfaces to be revegetated is not available on site, other suitable material capable of sustaining vegetation (such as subsoil) shall be removed as a separate layer for use as a suitable growth media. Topsoil and suitable growth media shall be maintained in separate stockpiles. Test plots may be required to determine the suitability of growth media for revegetation purposes.

(c) Soil salvage operations and phases of reclamation shall be carried out in accordance with a schedule that: (1) is set forth in the approved reclamation plan; (2) minimizes the area disturbed; and (3) is designed to achieve maximum revegetation success allowable under the mining plan.

(d) Topsoil and suitable growth media shall be used to phase reclamation as soon as can be accommodated by

the mining schedule presented in the approved reclamation plan following the mining of an area. Topsoil and suitable growth media that cannot be utilized immediately for reclamation shall be stockpiled in an area where it will not be disturbed until needed for reclamation. Topsoil and suitable growth media stockpiles shall be clearly identified to distinguish them from mine waste dumps. Topsoil and suitable growth media stockpiles shall be planted with a vegetative cover or shall be protected by other equally effective measures to prevent water and wind erosion and to discourage weeds. Relocation of topsoil or suitable growth media stockpiles for purposes other than reclamation shall require prior written approval from the lead agency.

(e) Topsoil and suitable growth media shall be redistributed in a manner that results in a stable, uniform thickness consistent with the approved end use, site configuration, and drainage patterns.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

§ 3712. Performance Standards for Tailing and Mine Waste Management.

State Water Resources Control Board mine waste disposal regulations in Article 1, Subchapter 1, Chapter 7 of Title 27, California Code of Regulations, shall govern mine waste and tailings, and mine waste disposal units shall be reclaimed in conformance with this article.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section 12-16-92; operative 1-15-93 (Register 92, No. 51).*
2. *Change without regulatory effect amending section filed 5-1-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 18).*

§ 3713. Performance Standards for Closure of Surface Openings.

(a) Except those used solely for blasting or those that will be mined through within one year, all drill holes, water wells, and monitoring wells shall be completed or abandoned in accordance with each of the following:

(1) Water Code sections 13700, et seq. and 13800, et seq.;

(2) the applicable local ordinance adopted pursuant to Water Code section 13803;

(3) the applicable Department of Water Resources report issued pursuant to Water Code section 13800; and

(4) Subdivisions (1) and (2) of section 2511(g) of Chapter 15 of Title 23 regarding discharge of waste to land.

(b) Prior to closure, all portals, shafts, tunnels, or other surface openings to underground workings shall be gated or otherwise protected from public entry in order to eliminate any threat to public safety and to preserve access for wildlife habitat.

NOTE

Authority cited: Sections 2755, 2756 and 2773, Public Resources Code. Reference: Section 2773, Public Resources Code.

HISTORY

1. *New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).*

Article 11. Financial Assurance Mechanisms

§ 3800. Purpose. It is the purpose of this article to specify additional financial assurance mechanisms to assure reclamation pursuant to Public Resources Code Section 2710 et seq. (Surface Mining and Reclamation Act, as amended).

NOTE

Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading*

transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).

§ 3801. Authority. Review, approval, adjustment, enforcement, notification, forfeiture and all other responsibilities of the lead agency, operator and Department of Conservation with respect to financial assurances shall be conducted as prescribed in Public Resources Code Section 2710 et seq. unless expressly outlined in this article.

NOTE

Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3802. Definitions. The following definitions shall govern the interpretation of this article:

(a) "Budget Set Aside" means a financial assurance mechanism, meeting the requirements of Section 3806.2 of this article, by which a government entity proposes to make specific identified monies within the entity's budget available to perform reclamation pursuant to the approved reclamation plan.

(b) "Financial Assurance Amount" means that amount of money necessary to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan, plus a reasonable estimate of the administrative costs and expenses which would be incurred by the lead agency or the Department of Conservation, the total of which shall be calculated in accordance with section 3804, and shall constitute an obligation to pay by the operator.

(c) "Financial Assurance" means an instrument, fund or other form of Financial Assurance as provided in Section 2773.1(a) and (e) of the Public Resources Code and this Article.

(d) "Pledge of Revenue" means a financial assurance mechanism meeting the requirements of Section 3806.1, of this Article, by which a governmental entity proposes to make specific, identified future revenue available to perform reclamation pursuant to the approved reclamation plan.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2726-2734, Public Resources Code.

HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3803. Financial Assurance Mechanisms. As outlined by this article, financial assurances may take the form of any one or a combination of the following, which the lead agency, upon review by the Department of Conservation, reasonably determines are adequate to perform reclamation in accordance with the approved reclamation plan.

(a) For non-governmental entity operators:
(1) Surety bonds;
(2) Irrevocable letters of credit; and
(3) Trust funds;
(b) For governmental entity operators:
(1) Surety bonds;
(2) Irrevocable letters of credit;
(3) Trust funds;
(4) Pledges of Revenue; or
(5) Budget Set Aside.

NOTE

Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading*

transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).

§ 3804. Calculation of Financial Assurance Amount.

(a) The Financial Assurance Amount shall be calculated as prescribed in Public Resources Code Section 2773.1 and based on:

(1) an analysis of the physical activities and materials necessary to implement the approved reclamation plan;

(2) the lead agency's unit costs, or costs for third party contracting, for each of these activities, if applicable;

(3) the number of units of each of these activities, if applicable;

(4) a contingency amount not to exceed 10% of the reclamation costs.

(b) The calculated amount should not include the cost of completing mining of the site.

(c) In order for the lead agency or the Department of Conservation to determine what annual adjustments, if any, are appropriate to the Financial Assurance Amount, the operator shall annually submit to the lead agency a revision of the written calculation required under Section 3804(a).

NOTE

Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3805. Review by the Department of Conservation.

Pursuant to Section 2774(c), Public Resources Code, the lead agency shall submit a copy of the proposed Financial Assurance and the Calculation of Financial Assurance Amount submitted by the operator pursuant to Section 3804 to the Director of the Department of Conservation for review. With this submittal the lead agency shall include the information and documentation relied upon in calculating the amount of the proposed Financial Assurance and indicate to the Director that the Financial Assurance Amount is adequate for the lead agency or the Department of Conservation to conduct and complete reclamation on the mined lands in accordance with the approved reclamation plan. The Director shall have 45 days, upon receipt, to prepare written comments regarding the proposed Financial Assurance, if he/she so chooses.

NOTE

Authority cited: Section 2774, Public Resources Code. Reference: Section 2774(c), (d), Public Resources Code.

HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§3805.5 Modification or Release of Financial Assurance

(a) Prior to the modification of a financial assurance amount, or to the release of the financial assurance instrument to which both the lead agency and the Department of Conservation are co-beneficiaries under Public Resources Code section 2773.1, the lead agency shall provide to the director of the department the following documents at one time:

(1) An inspection report, prepared by a qualified person as provided for in Public Resources Code section 2774, indicating that there are aspects of the surface mining operation that require modification of the existing financial assurance amount, or stating that the mined land has been reclaimed in accordance with the approved reclamation plan, and that there are no aspects of the reclaimed surface mining operation that are inconsistent with the meaning of reclamation as defined in Public Resources Code section 2733, and the Surface Mining and Reclamation Act of 1975, Chapter 9, commencing with section 2710.

(2) A revised financial assurance cost estimate prepared by the operator and accepted by the lead agency, or prepared by the lead agency, in accordance with Public Resources Code section 2773.1, with

supporting documentation, indicating the specific cost changes to the existing financial assurance amount, or indicating that there are no further outstanding reclamation liabilities to be included in the financial assurance.

(3) A statement by the lead agency, with supporting documentation that may include the most recent inspection report and any geological and engineering reports prepared as part of the inspection report, that the mined land remains subject to a financial assurance as modified, or that the mined land has been reclaimed in accordance with the approved reclamation plan, that there are no outstanding reclamation liabilities, and recommending to the director that the financial assurance be released.

(b) The director shall have 45 days from the date of receipt of the documents to review and comment on them as provided for in Public Resources Code section 2774, and to conduct the director's own inspection of the surface mining operation if the director determines it necessary under Public Resources Code section 2774.1, and do one of the following:

(1) Notify the lead agency of the director's concurrence that the modified financial assurance amount is adequate, or that there are no outstanding reclamation liabilities on the mined land and that the original financial assurance should be released pursuant to Public Resources Code section 2773.1, at which time the financial assurance shall be released; or,

(2) Notify the lead agency that the director has found, based upon an inspection, aspects of the surface mining operation that require additional modifications to the financial assurance amount, or aspects that are not in compliance with the approved reclamation plan and the Surface Mining and Reclamation Act of 1975; or,

(3) Commence the financial assurance forfeiture process under Public Resources Code section 2773.1.

(c) If a violation by the surface mining operation is confirmed by an inspection either by the lead agency or by the director, then the lead agency, or the director, may take actions under Public Resources Code section 2774.1 to ensure that the violation is corrected. In any event, the financial assurance shall not be released until the violation is corrected.

(d) Prior to sending written notification and release of financial assurances as provided under Public Resources Code section 2773.1, the lead agency shall obtain written concurrence of the director that the completion of reclamation of the mined land disturbed by the surface mining operation is in accordance with the requirements of the lead agency-approved reclamation plan.

(e) If a violation of the Surface Mining and Reclamation Act of 1975 or of the approved reclamation plan is confirmed by the inspection, and the lead agency does not take action under Public Resources Code section 2774.1 to ensure that the violation is corrected or take action under Public Resources Code section 2773.1 for forfeiture of the financial assurance, then the director may refer the matter to the board for further action under Public Resources Code section 2774.4.

NOTE

Authority: Section 2755, Public Resources Code; References: Sections 2729, 2731, 2733, 2735 2773.1, 2774, and 2774.1, Public Resources Code.

HISTORY

1. *New section filed 5-11-2004; operative 5-11-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 20).*

§ 3806. Surface mining operations owned and operated by state or local governmental entities.

In addition to the mechanisms provided in Public Resources Section 2773.1 and this article, a financial assurance mechanism for reclamation for a surface mining operation owned and operated by the state, county, city, district, or other political subdivision may be in the form of a:

(a) Pledge of Revenue; or

(b) Budget Set Aside.

These financial assurance mechanisms may only be used by the state, county, city, district, or other political subdivision.

NOTE

Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*

2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3806.1. Pledge of Revenue.

(a) A pledge of revenue shall consist of a resolution or other appropriate document from the governing body of the state, county, city, district, or other political subdivision responsible for reclamation of the mined lands pursuant to the approved reclamation plans. The resolution or document shall remain effective continuously throughout the period in which the pledge of revenue is used to satisfy the requirements of Section 2773.1, Public Resources Code.

(b) The pledge of revenue shall contain the following items:

(1) The resolution or document establishing the pledge of revenue;

(2) The types and sources of pledged revenue;

(3) The period of time that each source of revenue is pledged to be available;

(4) The calculation amount of the financial assurance prepared pursuant to Section 3804; and

(5) The authorization for the lead agency or the Department of Conservation to use the proceeds of the pledge to conduct and complete reclamation if the lead agency or the Department of Conservation determines that the operator is incapable of performing the reclamation covered by the pledge pursuant to Section 2773.1(b).

(c) The state, county, city, district, or other political subdivision may pledge any following types of revenue that it controls and that will be available in a timely manner to conduct and complete reclamation:

(1) Fees, rents, or other charges;

(2) Tax revenues within statutory limitations; and/or

(3) Other guaranteed revenues that are acceptable to the lead agency and the Board.

(d) If the governmental entity ceases at any time to retain control of its ability to allocate any pledged revenue to conduct and complete reclamation, the entity shall notify the lead agency and the Department of Conservation and shall obtain alternative coverage within 60 days after control lapses.

NOTE

Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.*
2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3806.2. Budget Set Aside.

(a) A Budget Set Aside shall consist of a specific fund or line item set aside by the state, county, city, district or other political subdivision responsible for reclamation of the mined lands. The Budget Set Aside shall remain effective continuously throughout the period in which the Budget Set Aside is used to satisfy the requirements of Section 2773.1, Public Resources Code.

(b) The set aside shall contain the following items:

(1) A resolution or other appropriate document establishing the set aside or line item including proof of approval by the governing body or appropriate official of the state, county, city, district or other political subdivision;

(2) The types and sources of specific funds;

(3) The period of time that each funding source is to be available;

(4) The calculation amount of the financial assurance prepared pursuant to Section 3804; and

(5) The authorization for the lead agency or the Department of Conservation to use the funds to conduct and complete reclamation if the lead agency or the Department of Conservation determines that the operator is incapable of performing the reclamation covered by the set aside pursuant to Section 2773.1(b).

NOTE

Authority cited: Section 2773.1, Public Resources Code. Reference: Section 2773.1(e), Public Resources Code.

HISTORY

1. *New article 10 and section filed 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to*

OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.

2. *Certificate of Compliance as to 2-23-94 order including renumbering of article heading transmitted to OAL 6-22-94 and filed 8-3-94 (Register 94, No. 31).*

§ 3806.3. Acceptance of Liability.

(a) An Acceptance of Liability shall consist of a specific written statement by a Federal entity responsible for performing reclamation that obligates that Federal entity for all costs associated with the full reclamation of mined lands in accordance with the requirements of an approved reclamation plan.

(b) The Acceptance of Liability shall contain the following items:

(1) A duly authorized resolution, statement, or other appropriate document that guarantees liability and obligates the Federal entity to reclaim the mine site; and,

(2) A statement that if the Federal entity ceases at any time to retain control of the mine operation, that the Federal entity's Acceptance of Liability shall remain in effect until the succeeding mine operator provides a financial assurance mechanism provided for in Public Resources Code Section 2773.1 and this Article 11. In no event shall any succeeding mine operator commence surface mining operations until a financial assurance mechanism is accepted by the lead agency.

NOTE

Authority cited: Sections 2755 and 2773.1, Public Resources Code. Reference: Section 2773.1, Public Resources Code.

HISTORY

1. *New section filed 1-28-2005; operative 2-27-2005 (Register 2005, No. 4).*

§ 3806.5. Surface Mining Operations Owned and Operated by a Federal Entity on State Owned Land.

In addition to the financial assurance mechanisms provided in Public Resources Code Section 2773.1 and this Article 11, a financial assurance mechanism for reclamation for a surface mining operation owned and operated on State lands by a Federal entity may be in the form of a:

(a) Pledge of Revenue

(b) Budget Set Aside

(c) Acceptance of Liability

NOTE

Authority cited: Sections 2755 and 2773.1, Public Resources Code. Reference: Section 2773.1, Public Resources Code.

HISTORY

1. *New section filed 1-28-2005; operative 2-27-2005 (Register 2005, No. 4).*

Article 11.5. Forfeiture of Financial Assurance

§ 3810. Purpose

The purpose of this article is to define the procedures to be followed by the lead agency, or the board acting at the request of the director, or when the board is acting as lead agency pursuant to Public Resources Code Section 2774.4 or Section 2774.5, in determining whether a surface mine operator is financially incapable of performing reclamation in accordance with its approved reclamation plan, or has abandoned its surface mining operation without commencing reclamation, and should therefore forfeit its financial assurance pursuant to Public Resources Code Section 2773.1(b).

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2773.1, 2774.4 and 2774.5, Public Resources Code.

HISTORY

1. *New article 11.5 (sections 3810-3817) and section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3811. Circumstances Leading to a Hearing. A lead agency or the board may conduct a hearing to determine the forfeiture of financial assurances when any of the following circumstances has occurred:

(a) Unless an appeal of a financial assurance amount is pending before the board pursuant to Public Resources Code Section 2770, an operator has failed to provide an acceptable financial assurance mechanism within 30 days of notification by the lead agency of its approval of an adequate financial assurance amount. Acceptable financial assurance mechanisms are described in Title 14, California Code of Regulations Section 3803.

(b) The operator has failed to provide the lead agency with a revised financial assurance cost estimate as required by Public Resources Code Section 2773.1 that adequately addresses the criteria contained in Title 14,

California Code of Regulations Section 3804 within 30 days of receipt of notification to provide a revised cost estimate.

(c) An acceptable financial assurance mechanism has lapsed and has not been renewed or replaced by another acceptable mechanism within 30 days and any remaining financial assurance coverage is not, according to the lead agency, adequate by itself to ensure the reclamation of the mine site according to the approved reclamation plan.

(d) The lead agency is unable to contact the mine operator or the mine's agent of record after 90 days of the mine's becoming idle as defined in Public Resources Code Section 2721.1.

(e) The surface mining operation meets the criteria stated under Public Resources Code Section 2770(h)(6). Submitting of an interim management plan after the operator has been notified that his or her mine meets the criteria in Section 2770(h)(6) shall not prevent the lead agency or the board from proceeding with its hearing.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2727.1, 2770 and 2773.1, Public Resources Code.

HISTORY

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3812. Public Hearing.

The determination by the lead agency or the board that a surface mine operator is financially incapable of reclaiming according to an approved reclamation plan, or that the operator has abandoned a mine site without commencing reclamation, shall be made during a public hearing. The hearing may be conducted as part of a regularly scheduled business meeting of the lead agency, or may be held during a special meeting. Where the board is the lead agency, the board may delegate the hearing to a committee composed of not less than two board members selected by the board Chairman or the Chairman's designee. The determination of the board committee shall be reported to the full board for its action at its next meeting.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.

HISTORY

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3813. Hearing Procedure – Notice

(a) The local lead agency shall give prior notice of the public hearing in accordance with the provisions of its local ordinances.

(b) Where the board is the lead agency, at least 10 days prior to the hearing date, public notice shall be given as follows:

(1) Mailing the notice to the operator and to the director.

(2) Mailing the notice to any person who requests notice of the hearing;

(3) Mailing the notice to the board's regular mailing list; and,

(4) Mailing the notice to the city or county jurisdiction within which the surface mining operation is located.

(c) The notice of hearing shall include the following:

(1) The name of the surface mine operator or agent of record;

(2) Identification of the surface mining operation, and a brief description of the location of the operation by reference to any commonly known landmarks in the area;

(3) A statement that the purpose of the hearing is to determine the financial capability of the operator to reclaim his or her mining operation in accordance with the approved reclamation plan;

(4) A statement inviting the operator, public agencies, and other interested persons to make statements at the hearing regarding the decision of the lead agency; and,

(5) The time, date, and location of the public hearing.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.

HISTORY

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3814. Administrative Record.

The administrative record shall consist of, but not be limited to, the following:

(a) The approved reclamation plan for the mining operation;

(b) The currently approved financial assurance mechanism in an amount certain;

(c) The name and address of the surface mining operator and the name and address of any person designated by the operator as an agent for the service of process;

(d) A detailed cost estimate provided by the operator and supporting a financial assurance amount prepared by a qualified individual, such as a licensed grading contractor, licensed civil engineer, or a licensed geologist, who must be licensed in the state of California, and prepared not more than six months from the last annual inspection of the mine conducted by the lead agency;

(e) A copy of the last annual inspection report conducted by the lead agency pursuant to Public Resources Code Section 2774, or any other more recent inspection conducted by the lead agency or the Department of Conservation.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2773.1 and 2774, Public Resources Code.

HISTORY

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3815. Criteria for Determining Financial Capability.

The lead agency or the board shall use, but not be limited to, the following criteria when determining the financial capability of a mine operator to perform reclamation. It is the sole responsibility of the surface mine operator to provide the lead agency or the board with sufficient information to reasonably demonstrate his or her financial capability. An operator shall be found financially incapable if the lead agency or the board makes any of the following findings:

(a) The operator is incapable of providing, or refuses to provide, a financial assurance in an amount deemed adequate by the lead agency or the board; or,

(b) The operator is incapable of providing, or refuses to provide, a financial assurance mechanism approved by the board in Section 3803 of this subchapter; or,

(c) The lead agency, the board, or the director, is unable to contact the mine operator or the mine's agent of record after 90 days of the mine's becoming idle as define in Public Resources Code Section 2727.1; or,

(d) The mine operation meets the criteria stated in Public Resources Code Section 2770(h)(6).

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2727.1, 2770 and 2773.1, Public Resources Code.

HISTORY

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3816. Hearing Procedures – Sequence.

(a) The public hearing conducted before the board shall normally proceed in the following manner; a local lead agency may conduct the hearing sequence according to its locally adopted procedures:

(1) Identification of the record;
(2) Statements of behalf of the lead agency;
(3) Statements on behalf of the operator
(4) Statements on behalf of he public;
(5) Rebuttal on behalf of the lead agency;
(6) Rebuttal on behalf of the operator; and
(7) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman of the board or the Chairman's designee for purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee shall have the authority to impose time limits upon statements and presentations and accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the board at least five days prior to the hearing.

(d) The public hearing conducted before the board or a lead agency shall be recorded.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2773.1, Public Resources Code.

HISTORY

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

§ 3817. Hearing Procedures – Determination

Following the public hearing, the lead agency or the board shall determine whether, based on the record before it and the criteria described in Section 3815 of the Article, the operator is financially incapable of performing reclamation in accordance with its approved

reclamation plan, or has abandoned its surface mining operation without commencing reclamation. If the operator is determined to be financially incapable of performing reclamation or to have abandoned the operation, then the following shall occur:

(a) The lead agency, or the director in cases where the Board is the lead agency, shall notify the operator within 10 days of the date of determination of its intent to take appropriate actions to cause forfeiture of the operator's financial assurances. Notification shall be made by personal service or certified mail.

(b) The lead agency, or the director, or the board in cases where the board is the lead agency, shall follow the procedures described in Public Resources Code Section 2773.1(b).

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2733.1, Public Resourced Code.

HISTORY

1. *New section filed 10-3-2002; operative 11-2-2002 (Register 2002, No. 40).*

Article 12. Administrative Penalty Petition Procedures

§ 3900. Purpose of Regulations.

The regulations contained in this article govern procedures for petitions to the State Mining and Geology Board pursuant to Public Resources Code Section 2774.2 concerning the issuance of an Administrative Penalty by the Director of the Department of Conservation.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

HISTORY

1. *New article 12 (sections 3900-3911) and section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New article 12 (sections 3900-3911) and section refilled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3901. Filing of Petition / Notice of Defense.

Any person filing a petition to the Board pursuant to Public Resources Code Section 2774.2 concerning the issuance of an administrative penalty by the Director of the Department of Conservation shall, within 30 days of the date of issuance of the order setting an administrative penalty, file a petition / notice of defense with the Board requesting a hearing. The petition / notice of defense shall be on the form set forth in Section 3911 of this article, or shall supply the following information to the Board:

(1) Written statements, with supporting documentation, indicating specifically the basis for the petitioner's challenge of the Director's order of administrative penalty;

(2) A written statement advising the Board of the name, address and telephone number of the petitioner's representative, if any.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*
3. *Amendment of first paragraph filed 9-30-2002; operative 10-30-2002 (Register 2002, No. 40).*

§ 3902. Determination of Jurisdiction.

The Chairman of the Board, or the Chairman's designee who is a Board member, shall determine within 15 days of receipt of the information required by Section 3901 of this article, whether the petition is within the jurisdiction of the Board for the purpose of hearing the petition, and determine whether the petition's challenge raises substantial issues related to the validity of the allegations supporting the Director's order. If the Chairman finds, based upon the criteria stated in (a), (b), and (c) below, that the petition raises no substantial issues with respect to the Director's allegations contained in the order of administrative penalty, or has not been filed within statutory time limits, then the Chairman shall refuse to grant a hearing on the petition. In making these determinations, the Chairman shall consider the following:

(a) Whether the filing of the petition/notice of defense with the Board is within the time limits stipulated in Public Resources Code Section 2774.2;

(b) Whether the petition specifically relates to the allegations contained in the Director's notice and order of administrative penalty;

(c) Whether prima facie documentation supporting the petition's position is reasonably sufficient to substantiate the petition's challenge.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Procedures Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3903. Administrative Record.

The Administrative Record shall consist of the record before the Director, evidence submitted on behalf of the petitioner, any other relevant evidence which, in the judgment of the Board, should be considered applicable, and evidence presented during the hearing on the petition.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3904. Hearing Procedures – Scheduling.

The Board shall schedule and hold a public hearing on a petition no later than 60 days from the Chairman's acceptance of the petition, or at such time as may be mutually agreed upon by the Board and the petitioner. The hearing may be conducted as part of a regular business meeting of the Board, or may be conducted by a committee of the Board. The Board shall endeavor to schedule such public hearings in or near the jurisdiction from which the petition originated, but may otherwise schedule such petitions to be heard in Sacramento.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act*

2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§3905. Hearing Procedures - Authority for Delegation.

The Board may delegate conduct of the hearing to a committee composed of three members of the Board, who shall consist of either the Chairman or Vice Chairman of the Board, and two other members of the Board selected by the Chairman. The Chairman or Vice Chairman shall conduct the hearing. The record of the hearing and the recommendations of the committee shall be presented to a quorum of the Board at its next regular business meeting for a decision of the full Board consistent with the procedures set forth in Section 3910 of this article.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3906. Hearing Procedures - Notice.

(a) At least 10 days prior to the hearing, the Board shall give public notice as follows:

(1) Mailing or delivering by personal service the notice to the petitioner and to the petitioner's lead agency;

(2) Mailing or delivering by personal service the notice to the Director of the Department of Conservation.

(3) Mailing the notice to any person who requests notice of the petition or hearing; and,

(4) Mailing the notice to the Board's regular mailing list.

(b) The notice of hearing shall include the following:

(1) The name of the petitioner;

(2) A statement describing the basis for the action;

(3) The amount of the administrative penalty petitioned;

(4) The time, date, and location of the public hearing.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3907. Hearing Procedures – Record.

The record before the Board at the public hearing shall be the administrative record submitted pursuant to Sections 3901, 3902, and 3903 of this article.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or*

readopted as, permanent following the procedures of the Administrative Procedure Act.

2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3908. Hearing Procedures - Recording and Transcription.

Hearings conducted under the procedures of this article shall be electronically recorded by the Board. Cost of transcription or reproduction of the electronic recording, if requested, shall be borne by the party making such request.

NOTE

Authority: Section 2755, Public Resources Code; Reference: Section 2755, Public Resources Code.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

§ 3909. Hearing Procedures - Use of Informal Hearing Procedure and Sequence.

(a) The Board may conduct the petition hearing under this article pursuant to the informal hearing adjudicative proceedings described in the California Administrative Procedure Act. The informal hearing procedure is intended to satisfy due process and public policy requirements in a manner that is simpler and more expeditious than hearing procedures otherwise required by statute, for use in appropriate circumstances.

(b) The public hearing shall normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the petitioner;

(3) Statements on behalf of the Director;

(4) Statements on behalf of the lead agency;

(5) Statements on behalf of the public;

(6) Rebuttal on behalf of the petitioner;

(7) Rebuttal on behalf of the Director;

(8) Motion to close the public hearing.

(c) Notwithstanding the above, the Chairman or the Chairman's designee (Board member) for the purposes of conducting the hearing may, in the exercise of discretion, determine the order of the proceedings.

(d) The Chairman or the Chairman's designee (Board member) shall have the authority to impose time limits upon statements and presentations and to accept written statements in lieu of oral statements. Four copies of any written statements shall be submitted to the Board at least ten days prior to the hearing.

(e) The actions of the Chairman or the Chairman's designee (Board member) under this section are not subject to judicial review.

(f) If the board determines that the petition for hearing has been withdrawn and more than 30 days has passed since the date of issuance of the order setting an administrative penalty, the order setting the administrative penalty shall not be subject to review by any court or agency.

(g) The actions of the Chairman or the Chairman's designee (Board member) under this section are not subject to judicial review.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Article 10, Administrative Procedure Act; Reference: Section 2774.2, Public Resources Code; Article 10, Administrative Procedure Act.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

3. *3. New subsections (e) and (f) and subsection relettering filed 9-30-2002; operative 10-30-2002 (Register 2002, No. 40).*

§ 3910. Hearing Procedures – Determination.

(a) Following the public hearing, the Board shall determine: (1) whether the alleged violations cited in the Director's order are supported by substantial evidence in light of the whole record before it; and, (2) the action the Board should take to affirm, modify, or set aside, in whole or in part, the administrative penalty issued by the Director. The Board shall issue its own order upholding its determination.

(b) Modify means to change the administrative penalty from its original construction by the director. The board may modify the administrative penalty, in whole or in part, by such measures as it deems appropriate which include, but are not limited to, increasing or decreasing the penalty amount, establishing compliance deadlines, and structuring a method for payment of the penalty.

(c) Notification of the Board's determination shall be made by certified mail or personal service to the petitioner, the lead agency, and the Director within 15 days following the regular business meeting of the Board at which the decision is made.

NOTE

Authority: Sections 2755 and 2774.2, Public Resources Code; Reference: Section 2774.2, Public Resources Code.

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*
3. *New subsection (b) and subsection relettering filed 9-30-2002; operative 10-30-2002 (Register 2002, No. 40)*

§ 3911. Petition / Notice of Defense Form.

STATE OF CALIFORNIA

DEPARTMENT OF CONSERVATION
STATE MINING AND GEOLOGY BOARD

IN THE MATTER OF THE	)	**Case No.**
ADMINISTRATIVE PENALTY	)	
ASSESSED AGAINST:	)	**PETITION/**
	)	**NOTICE OF DEFENSE**
	)	
an individual,	)	
	)	
d.b.a.	)	
	)	
	)	
PETITIONER(S)	)	
_____	)	

( ) I acknowledge receipt of this action assessing an administrative penalty under Public Resources Code Section 2774.1 (c) against me or the company for which I am the agent.

( ) I request a hearing before the State Mining and Geology Board.

( ) I object to the action on the ground that it does not state acts or omissions upon which the Department of Conservation may proceed.

( ) I object to the form of the action on the ground that it is so indefinite or uncertain that I cannot identify the transaction or prepare a defense.

( ) I admit the action in whole or in part. (Indicate which parts you admit by paragraph number or list on a separate page facts or allegations admitted.)

( ) I deny the action in whole or in part. (Indicate which parts you deny by paragraph number or list on a separate page facts or allegations denied.)

( ) I have no personal knowledge of the facts or allegations. (Indicate which parts by paragraph number or on a separate page.)

( ) I present the following new matter by way of defense:
(On a separate page, list other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the alleged violation. Be as specific as you can. If you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) cop(y/ies) if you can).

( ) I wish to present the following information, statement, etc. in addition:
(Use a separate page, if needed.)

( ) I have documents, exhibits, declarations under penalty of perjury and/or other materials that I am attaching to this form or that I want to be made a part of the administrative record for this administrative penalty. (Please list in chronological order by date, author and title and enclose a copy with this completed form.)

( ) I object to the action on the ground that, under the circumstances, compliance with the requirement of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights. (List the other regulation(s).)

( ) I will pay the full assessed amount and waive a hearing.
DO NOT SEND CASH. *Please note your case number on your remittance, made payable to:* ***State of California, Department of Conservation****, to ensure proper credit and mail it to this address: Department of Conservation, Office of Mine Reclamation, 801 K Street, MS 09-06, Sacramento, California 95814.*

If you intend to be represented by an attorney, please state his/her name, address, and telephone number. Otherwise, state the address and phone number where you want legal documents sent. Mail this Notice of Defense to: *Executive Officer, State Mining and Geology Board, 801 K Street, MS 24-05, Sacramento, California 95814.*

DATED: _____ _____
Petitioner's Signature

_____
Name of Counsel/Petitioner (circle one) **Phone Number**

_____
Address **City** **State** **Zip**

HISTORY

1. *New section filed 4-2-98; operative 4-2-98 (Register 98, No. 14). This interim regulation is exempt from most of the procedural requirements of the Administrative Procedure Act (specifically, from Articles 5 and 6 of Chapter 3.5, Division 3, Title 2, Government Code) and from review by the Office of Administrative Law pursuant to Government Code sections 11400.20 and will expire on December 31, 1998, unless earlier terminated or replaced by, or readopted as, permanent following the procedures of the Administrative Procedure Act.*
2. *New section refiled 11-16-98 as a permanent regulation; operative 12-16-98 (Register 98, No. 47).*

Article 13. Selection of Professional Service Firms

§ 3920. Selection of Professional Service Firms. (a) The purpose of these regulations is to establish those procedures authorized and required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. These regulations are specific to the Surface Mining and Reclamation Act of 1975 (Public Resources Code Sections 2710, et seq.)

(b) Selection by the board for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management, firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.

NOTE

Authority cited: Selections 2755-2759, Public Resources Code; and Section 4526, Government Code. Reference: Sections 4525-4529.5, Government Code.

HISTORY

1. New article 13 (sections 3920-3930) and section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).

§ 3921 Definitions, as Used in These Regulations (a) "Small business" shall mean a small business firm as defined by the Director of General Services (section 1896 of Title 2 of the California Code of Regulations) pursuant to section 14837 of the Government Code.

(b) "Architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services" are those services to be procured outside State of California Civil Service procedures and of a chapter necessarily rendered by an architect, landscape architect, engineer, environmental specialist, land surveyor, or construction project management contractor but may include ancillary services logically or justifiably performed in connection therewith.

(c) "Project" means a project as defined in Section 10105 of the Public Contract Code, or as defined in the Public Resources Code Section 21065.

NOTE

Authority cited: Section 4526, Government Code. Reference: Sections 4525 and 14837, Government Code; Section 10105, Public Contract Code; and Section 21065, Public Resources Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3922. Establishment of Criteria. (a) The board shall establish criteria, on a case by case instance, which will comprise the basis for selection for each project. The criteria shall include such factors as professional excellence, demonstrated competence specialized experience of the firm, education and experience of key personnel to be assigned, staff capability, workload ability to meet schedules, nature quality of completed work, reliability and continuity of the firm, location, and other considerations deemed relevant. Such factors shall be weighted by the board according to the nature of the project, the needs of the State and complexity and special requirements of the specific project.

(b) In no event shall the criteria include practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration. Board members with a relationship to a person or business entity seeking a contract under this section are prohibited from participating in the selection process if the board member would be subject to the prohibition of Section 87100 of the Government Code.

NOTE

Authority cited: Section 4526, Government Code. Reference: Sections 4526 and 87100, Government Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3923. Estimate of Value of Services.
Before any discussion with any firm concerning fees, the board may cause an estimate of the value of such services to be prepared. This estimate shall serve as a guide in determining fair and reasonable compensation for the services rendered. Such estimate shall be, and remain, confidential until award of contractor abandonment of any further procedure for the services to which it relates. At any

time the board determines the estimates to be unrealistic because of rising costs, special conditions, or for other relevant considerations, the estimate may be reevaluated and modified if necessary.

NOTE

Authority cited: Section 4576, Government Code.
Reference: Section 4528, Government Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3924. Request for Proposals. (a) Where a project requires architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services, the board shall make an announcement through a publication of the respective professional society, if any exist, in a construction trade journal or, if none exist, in other appropriate publications that are published within a reasonable time frame such that a lengthy publication delay does not adversely affect the project.

(b) The announcement shall contain the following information: The nature of the work, the criteria upon which the award shall be made, and the time within which statements of interest, qualification and performance data will be received.

(c) The board shall endeavor to provide to all small business firms who have indicated an interest in receiving such, a copy of each announcement for projects for which the board concludes that small business firms could be especially qualified. A failure of the board to send a copy of an announcement to any firm shall not operate to preclude any contract.

NOTE

Authority cited: Section 4526, Government Code.
Reference: Section 4527, Government Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-14-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 4)*

§ 3925. Selection of Firm. After expiration of the period stated in the publications or other public announcements, the board shall evaluate statements of qualifications and performance data which have been submitted to the board. Discussions shall be conducted with no less than three firms regarding the required service. Where three firms cannot be found which could provide the required service, a full explanation including names and addresses of firms and individuals requested to submit proposals must be entered in the files. From the firms with which discussions are held, the board shall select no less than thee, provided at least three firms submit proposals, in order of preference, based upon the established criteria, which are deemed to be the most highly qualified to provide the services required.

NOTE

Authority cited: Section 4526, Government Code.
Reference: Sections 4526-4527, Government Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3926. Negotiation. The board shall attempt to negotiate a contract with the most highly qualified firm. When the board is unable to negotiate a satisfactory contract with this firm with fair and reasonable compensation provisions, as determined by the procedure set forth in Section 3923 if those procedures were used, negotiations shall be terminated. The board shall then undertake negotiations with the second most qualified firm on the same basis. Failing accord, negotiations shall be terminated. The board shall then undertake negotiations with the third most qualified firm on the same basis. Failing accord, negotiations shall be terminated. Should the board be unable to negotiate a satisfactory contract at fair and reasonable compensation with any of the selected firms, additional firms may be selected in the manner prescribed in this article and the negotiation procedure continued.

NOTE

Authority cited: Section 4526, Government Code.
Reference: Section 4528 Government Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3927. Amendments. In instances where the board effects a necessary change in the project during the course of performance of the contract, the firms' compensation may be adjusted by negotiation of a

mutual written agreement in a fair and reasonable amount where the amount of work to be performed by the firm is changed from that which existed previously in the contemplation of the parties.

NOTE

Authority cited: Section 4526, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3928. Contracting in Phases. Should the board determine that it is necessary or desirable to have a given project performed in phases, it will not be necessary to negotiate the total contract price or compensation provisions that the board, at its option, may utilize the firm for other phases and that the firm will accept a fair and reasonable price for subsequent phases to be later negotiated and reflected in a subsequent written instrument. The procedure with regard to estimates and negotiation shall otherwise be applicable.

NOTE

Authority cited: Section 4526, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3929. Board's Power to Require Bids Where the board determines that the services needed are technical in nature and involve little professional judgment and that requiring bids would be in the public interest, a contract shall be awarded on the basis of bids rather than by following the foregoing procedures for requesting proposals and negotiation.

NOTE

Authority cited: Section 4526, Government Code. Reference: Section 4529, Government Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

§ 3930. Exclusions. The provisions of this article shall not apply to service agreements for an architect, landscape architect, engineer, environmental specialist, land surveyor, or construction project management contractor, engaged to provide consulting services on specific problems on projects where the architectural, landscape architectural, engineering, environmental, land surveying, or construction project management work is being performed by State of California Civil Service employees.

NOTE

Authority cited: Section 4526, Government Code. Reference: Section 4526, Government Code.

HISTORY

1. *New section filed 10-4-2000; operative 10-4-2000 pursuant to Government Code section 11343.4(d) (Register 2000, No. 40).*

Article 14. Appeals of Orders to Comply with the Surface Mining And Reclamation Act of 1975

§ 3940. Purpose of Regulations. The regulations contained in this article govern procedures affecting the review of orders to comply with the Surface Mining and Reclamation Act of 1975 (ACT) issued by the director of the department, or by the board when acting in the capacity of lead agency pursuant to Public Resources Code Section 2774.4.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2774.1 and 2774.4, Public Resources Code.

HISTORY

1. *New article 14 (sections 3940-3948) and section filed 10-1-2002; operative* 10-31-2002 (Register 2002, No. 40).

§ 3941. Determination of Jurisdiction.

(a) The Chairman of the board, or the Chairman's designee, shall determine whether the review of the order is within the jurisdiction of the board for the purposes of hearing the alleged violation. If the Chairman or the designee finds that the criteria listed in (1) and (2) below have been satisfied, then he or she shall schedule a hearing of the order before the board, otherwise he or she shall refuse to grant hearing. In making this determination, the Chairman, or the Chairman's designee, shall consider the following:

(1) Whether the order addresses violations related to the Act which have been confirmed by findings

during an annual inspection or as the result of another physical site inspection of the mine;

(2) Whether the alleged violation has extended beyond 30 days from the date of receipt by the operator of notification from the director or the board

(b) The Chairman of the board or designee shall make such a determination within 15 days of receipt of an order issued by the director. Where the board issues the order to comply pursuant to its lead agency authority under Public Resources Code Section 2774.4, no independent determination by the Chairman or the designee is required. The board shall notify the appellant and the director of its determination by certified mail or personal service.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.

HISTORY

1. *New section file 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3942. Administrative Record. The administrative record shall consist of the information that was before the director for an order issued by the director, or before the board for an order issued by the board, at the time the order was issued and which comprised the basis for the order. The information before the director, or the board, shall consist of but may not be limited to the following:

(a) The name and address of the surface mining operator and the name and address of any person designated by the operator as an agent for the service of process;

(b) A general description of the surface mining operation;

(c) A description of the alleged violation specifying which aspects of the surface mine's activities or operations are inconsistent with the Act;

(d) A time for achieving compliance that the director, or the board, has determined to be reasonable.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.

HISTORY

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3943. Hearing Procedures – Scheduling. The board shall schedule and hold a public hearing on an order no sooner than 30 days from the date of issuance of the order. In no case shall the hearing be scheduled beyond 60 days after the issuance of the order. The hearing may be scheduled as part of a regular business meeting of the board or may be conducted by a committee of the board.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.

HISTORY

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3944. Hearing Procedures – Authority for Delegation The board may delegate conduct of the hearing to a committee of at least two members of the board to be appointed for that hearing by the Chairman of the board. The Chairman of the board or the Chairman's designee shall conduct the hearing; the recommendations of the hearing committee shall be presented to a quorum of the board at its next regular business meeting for a decision of the full board consistent with the procedures set forth in Section 3948 of these regulations.

NOTE

Authority cited: Section 2755, Public Resource Code. Reference: Section 2774.1, Public Resources Code.

HISTORY

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3945. Hearing Procedures – Notice

(a) At least 10 days prior to the hearing, the board shall give public notice as follows:

(1) Mailing the notice to the lead agency (if the board is not the lead agency), the operator subject to the order to comply, and the director;

(2) Mailing the notice to any person who requests notice of the hearing;

(b) The notice of hearing shall include the following:

(1) The name of the operator subject to the order to comply;

(2) Identification of the proposed surface mining operation and a brief description of the location of the operation by reference to any commonly known landmarks in the area;

(3) A statement that the operator has been issued an order to comply with specific aspects of the Act;

(4) A statement inviting the operator, the lead agency, and the public to make statements at the hearing regarding the decision of board; and,

(5) The time, date, and location of the public hearing.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.

HISTORY

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3946. Hearing Procedures – Record. The record before the board at the public hearing shall be the administrative record submitted pursuant to Section 3942 of this article.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.

HISTORY

1. *New section filed 10-1-2002; operative 10-31-2002 (Register 2002, No. 40).*

§ 3947. Hearing Procedures – Sequence.

(a) The public hearing should normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the operator subject to the order;

(3) Statements on behalf of the director, or the board if acting as the lead agency;

(4) Statements on behalf of the public;

(5) Rebuttal on behalf of the operator; and

(6) Rebuttal on behalf of the director, or the board if acting as if the lead agency;

(7) Motion to close the public hearing.

(b) Not withstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.

(c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements (12 copies) must be submitted to the board at least five days prior to the hearing.

(d) The public hearing shall be recorded.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code.

HISTORY

1. *New section filed 10-1-2002, operative 10-31-2002 (Register 2002, No. 40).*

§ 3948. Hearing Procedures – Determination. Following the public hearing, the board shall determine whether, based on the record before it, the evidence before the director for orders issued by the director, or the board for orders issued by the board, substantially supports the basis for the order at the time the order was issued. If the board finds that the evidence in the record supports the issuance of the order, the board shall uphold the order and any effective date contained in the order. If no effective date is contained in the order, then the board shall set a date upon which the order takes effect. If the board finds that the evidence in the record does not substantially support the order, then the board shall not uphold the order and shall notify the director of the specific reasons for not upholding the director's order. Notification of the board's determination shall be made by certified mail or personal service to the operator and the director within 15 days following the regular business meeting of the board at which the determination is made.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Section 2774.1, Public Resources Code. HISTORY

1. *New section filed 10-1-2002, operative 10-31-2002 (Register 2002, No. 40).*

Article 15. Vested Rights Determination

§ 3950. Purpose of Regulations. No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976 shall be required to secure a permit pursuant to Section 2770 of the Public Resources Code. Any person claiming a vested right to conduct surface mining operations in

a jurisdiction where the State Mining and Geology Board (the Board) is lead agency pursuant to section 2774.4 of the Public Resources Code must establish such claim in a public proceeding under this article. In such a proceeding the Claimant shall assume the burden of proof.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3951 Vested Right(s) - Definition. A "vested right" is the right to conduct a legal nonconforming use of real property if that right existed lawfully before a zoning or other land use restriction became effective and the use is not in conformity with that restriction when it continues thereafter. A vested mining right, in the surface mining context, may include but shall not be limited to: the area of mine operations, the depth of mine operations, the nature of mining activity, the nature of material extracted, and the quantity of material available for extraction. A person shall be deemed to have a vested right or rights to conduct surface mining operations if, prior to January 1, 1976, the person has, in good faith and in reliance upon a permit or other authorization, if the permit or other authorization was required, diligently commenced surface mining operations and incurred substantial liabilities for work and materials necessary for the surface mining operations. Expenses incurred in obtaining the enactment of an ordinance in relation to a particular operation or the issuance of a permit shall not be deemed liabilities for work or materials. Expansion of surface mining operations after January 1, 1976 may be recognized as a vested nonconforming use under the doctrine of "diminishing assets" as set forth in *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533.

NOTE

Authority: Sections 2755, 2776 and 2775, Public Resources Code; Hansen Brothers Enterprises, Inc. v. Board of Supervisors (1996) 12 Cal.4th 533.) Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3952 Filing of Request for Determination. A claim of vested rights shall be initiated by filing a Request for Determination with the Board. At a minimum the Request for Determination shall include the following information:

(1) Name, address, and telephone number (and name, address, and telephone number of any agent for contact or service of notice, if different) of Claimant;

(2) Name, address, and telephone number of the property owner(s) if different than (1) above;

(3) Name, address, and telephone number of any lessee, lien holder, or other potential claimant to the vested right(s) asserted;

(4) A map indicating the exact location of the property upon which vested rights are asserted;

(5) A legal description of such property including township and range, metes and bounds, parcel numbers, or other descriptive methods to specifically identify such property;

(6) Copies of all documents which Claimant asserts establish title to such property;

(7) Written statements, with supporting documentation, indicating the basis for claim of a vested right to conduct surface mining operations upon such property;

(8) Written statements, with supporting documentation, identifying the scope or scale of the vested right claimed;

(9) Copies of, or statements specifically identifying, all local land use or mining ordinances or regulations which either may presently, or have historically, governed conduct of surface mining operations upon such property;

(10) The names and mailing addresses of the owners of all properties adjacent to property upon which a vested right is being asserted; and

(11) The name and address of any other governmental agency or entity having jurisdiction over the property or the surface mining operations on the property that may be affected by a determination of vested rights. All information submitted pursuant to this section shall be accompanied by a declaration or affidavit attesting to the true and accurate nature of the materials provided.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3953 Review and Determination Fee. Two fees are to be paid by the claimant submitting a Request for

Determination. Any person submitting a Request for Determination shall pay to the Board the following processing fee:

(a) A minimum processing fee of five thousand dollars ($5,000) as compensation for the initial review and notification. Should the Request for Determination be denied, any funds not used will be refunded.

(b) A determination fee for conducting the vested rights determination will be established. The claimant will be provided with an estimate of the cost of conducting a vested rights determination. Any funds in excess of the amount actually needed for conducting the determination will be refunded to the claimant. Any uncollected funds must be submitted prior to the official release of the determination. The fees in this subdivision shall be paid to the Board prior to release of any vested rights determination.

(1) If the Board employs an administrative hearing officer or special master for, and in, making the determination, an additional fee of one hundred dollars ($100) per hour for each full hour of time reasonably employed by such hearing officer or special master for drafting the findings and recommendation or proposed decision for the Board.

(2) If the Board employs a committee of its members for, and in, making the determination, an additional fee of one hundred dollars ($100) per Board committee member per day of service (or part thereof);

(c) Upon a showing of good cause the Board may waive all but a minimum of one hundred dollars ($100) of the fees imposed in subdivisions (a) and (b) above.

(d) Failure to submit the initial fee (identified in subsection (a) above) shall result in immediate rejection of the Request for Determination.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3954 Determination of Jurisdiction. The Chairman of the Board, or the Chairman's designee, based upon the information submitted pursuant to Section 3952 of this article, shall initially evaluate whether the Request for Determination is within the jurisdiction of the Board for purposes of making a vested rights determination and whether the Request for Determination contains the minimum information specified in Section 3952 of this article. The Chairman of the Board, or the Chairman's designee, shall make such initial determination within 15 business days of receipt of the Request for Determination. If the Chairman, or the Chairman's designee, determines that the Request for Determination is not within the Board's jurisdiction or does not contain the information required by the Board to evaluate the Request, the Request for Determination shall be rejected and the deficiencies in the Request specifically identified in correspondence to the claiming party.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3955 Notice of Pending Determination.
Within 30 business days after the Chairman of the Board, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section 3952 a notice of pending vested rights determination shall be mailed by the executive officer of the Board to every adjacent landowner identified in the Request for Determination and to the county, city, or regional agency originally holding lead agency status for the identified property and mining operation. A notice of pending vested rights determination shall also be provided to the person claiming vested rights for posting, within 5 days of receipt, upon the property in question in an open and conspicuous place that is reasonably visible to the public and at all points of entry to the property. The notice of pending vested rights determination shall identify the specific property upon which such vested rights are asserted and shall identify the Board as the agency which will be making the determination. The notice shall contain the Board's mailing and electronic addresses and a request that comments be forwarded to the Board. The notice shall remain posted as required through the conclusion of any hearing on the vested rights claim. The notice shall also be immediately noticed and placed on the Board's electronic website. Where the Board determines that additional notice is required, it may require the person claiming vested rights to provide such additional notice.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3956 Public Hearing. No vested rights determination will be made by the Board without a public hearing and an opportunity for the vested rights claimant, the original lead agency, and the public to comment.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3957 Selection of Hearing Officer. The Board may delegate conduct of a vested rights public hearing to a committee of at least two Board members to be appointed for that hearing by the Chairman of the Board. The Board may also delegate conduct of a vested rights public hearing to an administrative hearing officer or special master. As soon as practicable after the Chairman, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section 3952, and in no event more than 45 business days from such conclusion, the Board, or a designee of the Board shall decide whether a vested rights public hearing will be conducted by the Board, a committee of the Board, an administrative hearing officer selected by the Board, or a special master selected by the Board.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3958 Vested Rights Hearing - Schedule. The Board, its delegated committee, administrative hearing officer or special master shall schedule and hold a public hearing on a vested rights determination no less than 90 business days after the notice of pending vested rights determination was mailed pursuant to Section 3955. In no case shall the hearing be scheduled more than 180 business days after the Chairman, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section 3952 unless such hearing schedule is agreed to by the party claiming vested rights. The hearing scheduled may be within the county where the vested right is claimed or within the county of the Board's offices (County of Sacramento).

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§3959 Vested Rights Hearing Procedure – Notice/Submission of Written Materials.

(a) At least 90 calendar days prior to a vested rights public hearing, the Board shall give further public notice as follows:

(1) By mailing the notice to the Claimant and all parties receiving notice pursuant to Section 3955;

(2) By mailing the notice to any person who requests notice of the hearing;

(3) By mailing the notice to the Board's regular mailing list; and

(4) By posting of the notice in a place where notices are customarily posted in the city, or county, or regional jurisdiction within which the property is located or the surface mining operations are to take place (or both, if affected operations and affected property are in different jurisdictions.)

(b) The notice of hearing shall include the following:

(1) The name of the party claiming vested rights;

(2) Identification of the surface mining operation, a brief description of the location of the operation and area of asserted vested rights by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;

(3) A statement inviting the party claiming vested rights, the original lead agency, and the public to make statements at the hearing regarding the vested rights asserted;

(4) A request that any additional written materials be delivered to the Board no less than 60 calendar days before the hearing and in no case will any responsive materials be submitted less than 45 calendar days prior to the hearing.

(5) The time, date, and location of the public hearing.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3960 Vested Rights Hearing Procedure - Record. The initial record before the Board, its delegated committee, administrative hearing officer, or special master shall be all of the materials provided pursuant to Section 3952, and all other written materials and public comments provided in response to the notice of pending determination or received at the public hearing.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3961 Vested Rights Hearing - Sequence.

(a) The public hearing should normally proceed in the following manner:

(1) Identification of the record;

(2) Statements on behalf of the vested rights Claimant;

(3) Statements on behalf of the agency originally holding lead agency status;

(4) Statements on behalf of the public;

(5) Rebuttal on behalf of the Claimant; and

(6) Motion to close the public hearing.

(b) Notwithstanding the above, the Chairman of the Board or the delegated committee's selected chair, or the Board's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings, provide for additional testimony, or provide for additional rebuttal.

(c) The Chairman of the Board or the delegated committee's selected chair, or the Board's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted at least five business days prior to the hearing.

(d) All statements of fact made at the hearing shall be under oath as administered by the Chairman of the Board or the delegated committee's selected chair, or the Board's designee.

(e) The public hearing shall be recorded either electronically or by other convenient means.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3962 Vested Rights Hearing Procedure - Continuance. The public hearing may be continued from day to day as necessary to receive all of the statements, information, and testimony identified in Section 3961.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3963 Vested Rights Hearing Procedure - Evidence. Relevant evidence in a proceeding for determination of a claim of vested rights shall be written or oral evidentiary statements or material demonstrating or delimiting the existence, nature and scope of the claimed vested right[s]. Such evidence shall include, but is not limited to, evidence of any permit or authorization to conduct mining operation on the property in question prior to January 1, 1976, evidence of mining activity commenced or pursued pursuant to such permit or authorization, and evidence of any zoning or land use restrictions applicable to the property in question prior to January 1, 1976. As to any land for which Claimant asserts a vested right for expansion of operations, Claimant shall produce evidence demonstrating that the Claimant clearly intended to expand into such areas. Such evidence shall be measured by objective manifestations, and not subjective intent at the time of passage of the law, or laws, affecting Claimant's right to continue surface mining operations without a permit.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. (See, *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533.) *Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.*

§ 3964 Vested Rights Hearing Procedure - Determination.

Following the public hearing, the Board, if the Board conducted the hearing, or its committee, administrative hearing officer, or special master shall determine whether the Claimant, by a preponderance of the evidence, has demonstrated a claim for vested rights pursuant to Public Resources Code Section 2776. The determination shall identify upon what specific property the vested rights are established and the scope and nature of surface

mining operations included within the established vested right or rights. If the public hearing was conducted by a committee of the Board or an administrative hearing officer or special master designated by the Board, the findings and recommendation or proposed decision of the committee of the Board, administrative hearing officer, or special master shall be presented to a quorum of the Board at a regular business meeting, no later than 60 business days after completion of the vested rights public hearing, for consideration and adoption by the full Board. The Board may adopt the recommendation or proposed decision or reject the recommendation or proposed decision and direct the matter back to its delegee for further consideration in light of the discussion before the full Board. The Board may also modify the proposed decision based upon the record before it or make an alternative determination based upon the record or following receipt of additional evidence before the full Board. Following adoption of the Board's final determination notification shall be made by certified mail to the party claiming vested rights and to the local agency originally holding lead agency status. Notification of the final determination of the Board shall also be made by regular mail to any person who commented at, or participated in, the public hearing, any person who has requested such notice, and shall be immediately posted upon the Board's website.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

§ 3965 Effect of Vested Rights Determination. A final determination by the Board recognizing a claim of vested rights shall constitute acknowledgment that the specific surface mining operations as identified upon the specific property or properties does not require a permit under Public Resources Code Section 2770 provided that no substantial change may be made in such mining operations. If any vested rights identified pursuant to this article are waived or abandoned the surface mining operations identified shall become subject to the permit requirements of the Surface Mining and Reclamation Act.

NOTE

Authority: Sections 2755 and 2775, Public Resources Code. Reference: Calvert v. County of Yuba, (2007) 145 Cal. App. 4th 613.

Article 16. Mining Ordinances

§ 4000. Certification and Recertification of Mining Ordinances.

(a) Upon adoption of a new mining ordinance, or amendment of an existing mining ordinance, a lead agency shall, within 30 days of such action, provide written notice of the complete text of the resulting mining ordinance to the State Mining and Geology Board, to enable the Board to review the ordinance in accordance with Public Resources Code Sections 2774.3, 2774.5(a) and 2774.5(b).

(b) Where a lead agency has not provided the Board with timely notice of the complete text of its mining ordinance, consistent with subparagraph (a) herein, the mining ordinance shall not be considered to be in accordance with state policy until the mining ordinance is certified by the Board as being in accordance with state policy.

NOTE

Authority cited: Section 2755, Public Resources Code. Reference: Sections 2756, 2758, 2759, 2774.3, 2774.5(a), 2774.5(b) and 2774.5(c), Public Resources Code.

HISTORY

1. New article 16 (section 4000) and section filed 1-13-2014; operative 4-1-2014 (Register 2014, No. 3).